

MEMPHIS POLICE DEPARTMENT

OPERATIONAL ASSESSMENT

TRANSPARENCY AND ACCOUNTABILITY



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Executive Summary and Introduction

The Memphis Police Department (MPD) is a large police department, operating in a high-crime environment that is dynamic and challenging to the police. As in any other community, ethical challenges arise in all types of organizations, both governmental and private. But police departments are, and should be, held to a higher standard with regard to ethics, transparency, and accountability.

The Memphis Police Department has been plagued over the last several years by a series of high-profile misconduct episodes resulting in the arrests of Memphis officers. Charges have included such offenses as sex trafficking/prostitution, narcotic offenses, sexual molestation, providing protection to criminals, domestic violence, drunk driving, and theft. Such transgressions can erode the public's trust for the effectiveness and competency of their police,, especially when the City and MPD are conducting an extensive campaign against violent crime in Memphis.

There are two critical components that must be addressed to deal with serious police misconduct. First, a police department must have effective systems to deal with misconduct after it has been discovered. Second, the department must put into place systems designed to prevent such misconduct. The City of Memphis and the Memphis Police Department have retained the Police Executive Research Forum (PERF) to conduct an assessment¹ of the Memphis Police Department with regard to both components. The assessment was designed to answer ten questions, six of which are about how the department deals with the aftermath of misconduct and four of which deal with the prevention of misconduct.

The six questions concerning the aftermath of misconduct are:

¹ This report is fourth in a group of five deliverables. The first three reports have been completed and submitted to Memphis officials. The five reports address the following topics:

- Staffing, Organization and Structure
- Recruitment, selection, training, and promotion.
- Community engagement.
- Transparency and accountability.
- Anti-crime strategies and tactics.

1. *What procedures are in place for the public to file complaints against police employees for misconduct or dissatisfaction with police service?*
2. *How does the department accept, record and investigate internally generated performance and behavior complaints?*
3. *Does the department use an efficient and effective system to determine whether internal investigations are assigned to supervisors or to internal affairs investigators?*
4. *How does the department determine disciplinary outcomes? Is the MPD's process fair and consistent?*
5. *What procedures are in place for citizens to appeal a disciplinary decision and/or for employees to appeal a decision or initiate a grievance process?*
6. *How does the department report complaint/disciplinary outcomes to the general public?*

The four questions pertaining to the prevention of serious misconduct are:

7. *What methods does the department have in place for supervisors to identify officers at risk of possible misconduct as early as possible, and how is corrective action taken? Is there a formal "Early Intervention" or "Early Warning" system in place? How well is it working?*
8. *How does the Memphis Police Department foster accountability at all levels of the organization for performance outcomes?*
9. *What processes does the department use to create and maintain an organizational culture that places great value on the highest levels of ethics and integrity?*
10. *Has the MPD established a useful performance evaluation system that defines and measures the behaviors and actions desired of its employees?*

In the final portion of the study, PERF reviewed specific policies covering internal integrity, MPD's rules, drug policy, command officer notification, use of force and weapons. Recommendations to improve these policies to move them toward policing best practices are made when warranted.

In general, the Memphis Police Department has sufficient systems in place to deal with the aftermath of misconduct although this report recommends a number of ways to strengthen and improve these systems. More work is needed, however, to improve the department's system of early detection and prevention of misconduct.

Overview of Findings

This overview provides assessments of each of the ten questions. Additionally it contains summaries of the recommendations that are made in the body of the report to improve how the Memphis Police Department deals with the aftermath of police misconduct and

the prevention of police misconduct. PERF's reasons for each recommendation can be found in the full report. Additional recommendations are made to improve MPD's high-risk policies that mandate officer behavior. They are found in a separate section of report.

Question 1- What procedures are in place for the public to file complaints against police employees for misconduct or dissatisfaction with police service?

Question 2 - How does the department accept, record and investigate internally generated performance and behavior complaints?

The MPD has policies and procedure in place that mandate how internal and external complaints are accepted, recorded, and investigated. Policy clarifications with regard to the Internal Affairs unit's responsibilities, the department's response to resistance (use of force) policy, and officer-involved shooting policy will improve the process of investigating internal or external complaints.

The recommendations related to Questions 1 and 2 are:

- 1. The MPD should not demand any requirement for complaint submission that is not legally mandated and further should ensure that it accepts complaints without any inference or suggestion that retribution would follow if a complaint against an officer is non-sustained.**
- 2. The MPD should clarify the responsibilities of the Internal Affairs unit.**
- 3. The MPD should revise its Response to Resistance policy to reflect that chemical weapons and impact weapons may result in deadly force if misapplied.**
- 4. The MPD should modify policy to reflect that all officer-involved shooting incidents are investigated in the same way – regardless of whether a person is actually shot.**
- 5. The MPD should consider requesting that personnel from the Attorney General's² office respond to the scene of all officer-involved shootings.**

Question 3 - Does the department use an efficient and effective system to determine whether internal investigations are assigned to supervisors or to internal affairs investigators?

² In Memphis the prosecutor office is referred to as the Attorney General.

The department has an efficient and effective system to determine whether internal investigations are assigned to internal affairs investigators or supervisors. Making sure that workstation³ complaints are handled in a consistent way is an important component of an effective internal affairs investigative program. The MPD has implemented procedures that allow database access to all work station complaints, and Internal Affairs reviews each case to determine whether complaints are appropriately being investigated at the station, and that those investigations are proper and consistent. Recommendations to improve this process follow.

- 6. The MPD should clarify the differences in the usage of the terms “work station” and “walk-in” complaints.**
- 7. The MPD should capture the common themes of work station complaints to determine if more global corrective actions should be taken.**

Question 4 - How does the department determine disciplinary outcomes? Is the MPD’s process fair and consistent?

The MPD has a policy in place that defines the level of discipline that can be administered by various levels of supervisory/command personnel; however, there is no systematic process in place that insures that similar offenses are treated in a similar fashion with regard to disciplinary outcomes. While penalties applied in disciplinary cases may be uneven, the process usually will conform to policy and with a memorandum of understanding reached with the Memphis Police Association. To improve the consistency and fairness of disciplinary sanctions, the department should implement the following recommendations.

- 8. The MPD should develop a disciplinary matrix to ensure that similar discipline is applied to officers in similar situations across the department and over time.**
- 9. The MPD should publish disciplinary statistics.**
- 10. The MPD should ensure that all supervisors/commanders that have the power to issue discipline are appropriately trained to do so.**

³ The term “workstation” is used by the MPD to describe the unit or station officers are assigned to. In the case of patrol, the term district station is no longer used. As an example, the Tillman station is responsible for a geographical area in the City of Memphis. It is considered the “workstation” of the officers assigned to it. The term “workstation” was used in this report as it is the common frame for reference for members of the department.

11. The MPD should conduct an analysis of the types and causes of disciplinary actions.

Question 5 - What procedures are in place for citizens to appeal a disciplinary decision and/or for employees to appeal a decision or initiate a grievance process?

There are adequate provisions in place for an employee to appeal or grieve a disciplinary decision. When complaint investigations are completed and complainants are notified of outcomes, they have the opportunity to appeal the department's decision to the Civilian Law Enforcement Review Board which has the power to "receive, investigate, hear cases, make findings and recommend action on complaints concerning the City of Memphis Police Officers. No recommendations are offered regarding this question.

Question 6 - How does the department report complaint/disciplinary outcomes to the general public?

The Memphis Police Department does not routinely report disciplinary outcomes to either the public or to department personnel. Both internal and public disclosure of generic⁴ disciplinary case closure types increases a department's transparency, and has several internal and external benefits. Implementation of the two recommendations below will create both internal and external processes for releasing information about disciplinary outcomes.

12. The MPD should compile and release disciplinary statistics internally and externally on a regularly scheduled basis.

13. The MPD should develop a formal process for notifying citizens who file complaints against officers of the disposition of their complaints.

Question 7 - What methods does the department have in place for supervisors to identify officers at risk of possible misconduct as early as possible, and how is corrective action taken? Is there a formal "Early Intervention" or "Early Warning" system in place? How well is it working?

⁴ Disciplinary actions are often protected from public disclosure, yet a generic, non-identifiable release of all discipline imposed over time will demonstrate that the department is doing its job, while being fair and consistent on discipline.

The Memphis Police Department has an Early Warning System (EWS) that is in the process of being improved to a system referred to as the Performance Enhancement Program (PEP). Both are automated systems where various types of officer conduct are entered into the system. Officers are flagged for intervention if certain performance thresholds are met, indicating that the officer is beginning to demonstrate a pattern of behavior that, if left unchecked, is likely to lead to serious misconduct. The new PEP system should improve the department's ability to identify potential problem behaviors in a fair and consistent manner. If implemented, the recommendations below will lead to improvements in the capabilities of the PEP system.

- 14. The MPD should amend the policy governing its Performance Enhancement Program to state that an alert by PEP will not result in discipline. Discipline should only result from the merits and mitigating circumstances of sustained cases.**
- 15. The MPD should encourage supervisors to not only rely on the PEP system to monitor the well-being of their subordinates. Good supervisors should be aware of difficulties their subordinates may be encountering through daily, informal interactions.**

Question 8 - How does the Memphis Police Department foster accountability at all levels of the organization for performance outcomes?

The department, through its policies, has provided extensive guidelines for its expectations for employee performance. Although there are some systems in place to foster accountability, improvement should be made in reiterating performance expectations.

- 16. The MPD should develop a series of short training modules on ethics and accountability for performance for delivery at roll calls.**

Question 9 - What processes does the department use to create and maintain an organizational culture that places great value on the highest levels of ethics and integrity?

The MPD has both policy and training initiatives in place that are designed to maintain an organizational culture that places great value on the highest level of ethics and integrity. However it is difficult to assess their overall effectiveness in maintaining a positive ethical department culture. The department should use additional techniques to improve

culture, ethics and integrity. Implementation of the recommendations will improve the department's focus on culture, values, ethics, and integrity.

- 17. The MPD should revise its values statements for the department.**
- 18. The MPD should train and reinforce values at each level of the organization.**
- 19. The MPD should assess job applicants' personal values during the selection process to ensure that they are in keeping with the department's values.**
- 20. The MPD should evaluate officers' adherence to organizational values, when warranted.**
- 21. The MPD should commend officer performance in the context of organizational values, when warranted.**
- 22. The MPD should require supervisors to be attentive to aspects of officers' personal lives that may be indicative of stresses that could lead to misconduct.**

Question 10 - Has the MPD established a useful performance evaluation system that defines and measures the behaviors and actions desired of its employees?

The MPD has established a performance evaluation system that defines and measures the behaviors and actions desired of its employees. The current system is adequate, in that the results of performance evaluation can be used to promote personnel growth and development. There is no "pay-for-performance" plan in the MPD, so performance evaluations do not have an impact on compensation. More importantly, the results of performance evaluations are not used when considering an officer for promotion. Promotability ratings based on performance evaluations are not part of the promotional procedure agreed to with the Memphis Police Association. If implemented, the following recommendations will enable the performance evaluation system to assist the department in preventing misconduct by attaching meaningful rewards for outstanding performance.

- 23. The evaluation system should require formal discussions more frequently than once a year.**
- 24. The due date of performance evaluations should be staggered to eliminate the need to do all performance evaluations at one time.**
- 25. The department should incorporate a review of performance evaluations in the promotional process.**

- 26. The department should expand and ensure consistency in the use of the Officer Behavior Report (OBR).⁵**
- 27. The department should introduce the concept of organizational values into the performance evaluation system.**
- 28. The department should expand the current reward system for positive performance.**
- 29. The department should provide ongoing performance evaluation training to supervisors.**

In addition to providing answers to the ten questions by the City this report assesses a series of high risk policies and makes additional recommendations for improvements. Policies reviewed in that section of the report include those pertaining to internal integrity, MPD's rules, drug policy, command officer notification, use of force and weapons.

The Memphis Police Department needs to improve both its systems for dealing with the aftermath of misconduct and the prevention of misconduct. Implementation of the recommendations that resulted from this study will help the department maintain the trust needed for it to successfully police the city.

⁵ OBRs are a simple one-page form used at the workstations. They are used to document officer performance. An OBR can be used to commend an officer's positive actions, or document poor performance. OBRs are used as a reference when developing annual performance evaluations.

Complaints Against Officers

The City posed the following questions related to public complaints against officers.

- 1. What procedures are in place for the public to file complaints against police employees for misconduct or dissatisfaction with police service?*
- 2. How does the department accept, record and investigate internally generated performance and behavior complaints?*

Citizen complaints may be filed with either Internal Affairs or at individual police stations. The complainant is asked to show identification and sign the complaint, and the complaint must be notarized. The department has notaries available for this purpose (both the I/A and Security Squad lieutenants are notaries).

- If the resident cannot appear in person, a written complaint can be submitted, but the MPD asks that the complaint be signed.
- Anonymous complaints are reviewed and can result in an administrative complaint at the discretion of Internal Affairs with the deputy director's approval.
- The department also maintains a confidential hotline.

Misconduct complaints that are lodged against officers internally (by supervisors or other officers) must be reviewed using the same criteria as external complaints.

- Internal Affairs reviews the complaint for allegations of policy violations or criminal misconduct.
- If such allegations are identified, the complaint is retained for investigation in ISB, just as it would be for an externally -generated complaint. Otherwise, internal complaints are handled as external work station complaints.
- Complaints surrounding poor performance are generated by the initiating official – usually the officer's immediate supervisor.
- All internally generated complaints are entered into IA Pro (a specialized internal affairs software package) by the designated personnel at the location where the complaint will be investigated.
- However, as with other work station complaints, other than ensuring timely completion of the investigations, tracking is limited to compiling aggregate numbers.

Both internal and external complaints are investigated at the work-station level or by the Inspectional Services level. Each is discussed in the next sections of the report.

Inspectional Services Bureau

The Inspectional Services Bureau (ISB) comes under the command of a police major and is divided into two components: the Internal Affairs Squad and the Security Squad – each staffed by a lieutenant and with an authorized strength of 10 investigators.

The Internal Affairs Squad conducts internal administrative investigations into allegations of misconduct by police personnel. These are generally allegations that a member has violated departmental and/or city policies. This includes allegations of excessive use of force. While the range of misconduct complaints investigated by the Internal Affairs Squad can vary from minor to serious, many less serious complaints are referred to the field commanders to be assigned to officers' immediate supervisors for investigation.

The Security Squad is responsible for the investigation into all officer-involved shooting incidents. Additionally, the Security Squad investigates allegations of criminal misconduct lodged against sworn police employees and civilian employees when on-duty. Serious criminal violations may be jointly investigated by the investigative unit responsible for that criminal specialty (e.g. Robbery, Sex Assault). As needed, Security Squad investigators may also be called upon to conduct investigations into serious allegations against other city employees.

The ISB has the added responsibility of reviewing Response to Resistance Forms submitted whenever an officer uses force against a person that amounts to more than “mere presence” or “routine or procedural physical contacts (e.g. guiding, holding, handcuffing or securing in order to frisk). The purpose of this review is to determine if there was compliance with departmental procedures; the comprehensibility of the policy in question; adequacy of training and equipment; and identification of tactical issues. This review culminates in a report to the police director outlining summary data and recommendations stemming from the analyses.

A review of the cases investigated by the Inspectional Services Bureau for the three years 2009-2011 is depicted in the following table.

Three Year Comparative Analysis of Inspectional Service Investigations

<i>Investigative Unit</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>Percent Change From 2010 to 2011</i>	<i>Percent Change From 2009 to -2011</i>
Internal Affairs Total	142	142	83	-41%	-41%
Security Squad Total	70	71	97	36.6	38.6
Officer Shooting Total	68	31	55	77.4	-19.1
ISB Total Case Count	280	244	235	-3.7	-16.1
ISB Total Violation Count	523	472	464	-1.7	-11.3
ISB Total Walk-In Count	511	490	454	-7.3	-11.2

This table shows that total bureau case investigations have declined 11.2% over the three-year period examined. Breakdown by squad and case type is as follows:

- The total number of cases handled by the Internal Affairs Squad (policy violations) remained constant from 2009 – 2010, but decreased dramatically by 41% in 2011.
- During the three year period, the criminal violations investigated by the Security Squad increased by 38.6%.
- Officer-involved shooting events decreased by 77 % from 2009 to 2010 but went back up in 2011 offsetting most of the prior year's decline.
- The overall number of cases investigated bureau-wide has gone down modestly each year.
- The average number of violations per investigated case has elevated only slightly at 1.86 in 2009, 1.95 in 2010 and 1.97 in 2011, but the total number of violations has decreased each year.
- Walk-in complaints which according to MPD officials are typically allegations of minor infractions such as rudeness and are mostly handled by supervisors in the field have gone down each year for a two-year decline of 11.2%.

The information contained in the following table describes the disposition of Inspectional Services Bureau cases in 2011.

Year 2011 Inspectional Services Disposition Breakdown

Incident Type	Count
Firearm discharge	55
Justified	42
Sustained	12
(No finding)	1
Internal Affairs Squad	83
Not Sustained	40
Sustained	26
Unfounded	8
Dropped	4
Exonerated	3
Dismissed	1
(No finding)	1
Security Squad	97
Sustained	56
Not Sustained	27
Unfounded	6
Dismissed	3
Pending	2
Dropped	1
Closed	1
Held in Abeyance	1

Based on PERF's experience with internal investigations processes in other police departments, MPD's rate of sustained cases is higher than most. This is especially true of the criminal complaints investigated by the Security Squad. After eliminating complaints that were unfounded or otherwise dismissed, between the two squads over 55% of complaints were sustained (39% of policy violation complaints, investigated by Internal Affairs, and 67% of criminal infraction complaints, investigated by the security squad).

This high rate of sustained cases is particularly noteworthy when the information in the following table – the five areas into which most complaints fall – is considered. Often these types of complaints (e.g. personal conduct) come down to the complainant's word against the officer's. These can be difficult cases to sustain. Criminal matters, where evidence may consist of more than unconfirmed testimony, are often more readily sustained. The higher than typical sustained rates suggest that, although the department

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has experienced an increase in reported criminal misconduct, it is aggressively dealing with offending officers.

The next table shows the five largest categories of investigations.

Categories of Investigations by Frequency – 2009 to 2011

<i>Violations</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>Percent Change from 2010 to 2011</i>	<i>Percent Change from 2009 to 2011</i>
Personal Conduct	140	162	142	-12%	1%
Compliance With Regulations	116	105	135	28%	16%
Excessive Force/Abuse	132	112	109	-3%	-17%
Truthfulness	14	12	29	141%	107%
Domestic Violence	N/A	1	24	-	N/A

In 2009, these five categories constituted 76% of all violations investigated. By 2011 they constituted 95% of all violations investigated. The greatest increases in investigations were for truthfulness violations and domestic violence violations. Domestic violence violations were not tracked until 2010, with significant attention beginning given only in 2011.

All of these categories represent duty related behavior, except domestic violence. Department members attributed some of the increase in arrests of officers to domestic violence allegations specifically. The increase from one investigation in 2010 to 24 investigations in 2011 indicates increased departments focus on investigating and making arrests for off-duty behavior for domestic violence.

The remainder of the duty-related classifications have either increased or decreased slightly. The changes in the number of investigations are likely not indicative of an overall change in officer behavior. Other factors related to organizational assignment, supervision, and department staffing levels at the time are more likely the cause.

Officer-Involved Shootings

In accordance with departmental policy (Section 8, Chapter II – Response to Resistance), officers are required to immediately notify their dispatcher any time they discharge any firearm, regardless of whether it is on-duty or off-duty. The dispatcher's notification of the appropriate supervisor triggers the initiation of an immediate preliminary investigation and further notification of the precinct or bureau commanders.

It is the duty of the first arriving supervisor to ensure notification of the Inspectional Services Bureau (ISB), Homicide, Felony Assault/Felony Response⁶, Crime Scene Investigation (CSI) and the appropriate Deputy Chief. Additionally, that supervisor directs crime scene security (including security of all involved officers' firearms until ISB or CSI takes control of them) and ensures the management of witnesses. In addition, an outer perimeter is to be established in order to assist with crowd control.

According to MPD policy, upon notification of a police shooting incident, Homicide, ISBs Security Squad and Crime Scene personnel will respond to the incident scene in all of the following three types of incidents:

- Any shooting by an officer, either on-duty or off-duty, and/or regardless of the weapon, which involves death or injury to oneself, a suspect, other officers, or a citizen; and
- Any shooting by an officer, either on-duty or off-duty, and/or regardless of the weapon, where a suspect has been shot or there is evidence that the suspect was shot and has not been located; and
- Any incident where an officer has been shot by a suspect.

ISB has responsibility for the policy compliance investigation of police shootings, but it is the commander of the Homicide Bureau, Felony Assault Bureau or Felony Response (as applicable) who also serves as the incident scene commander.

Whenever an officer or other person is shot, or there has been an in-custody death, the involved officers will not be interviewed for 48 hours from the time of the incident. There is a policy requirement that commanders and lead investigators meet within five days to conduct a case status review and lay out further investigative tasks.

Independently, two Attorney General's homicide advisors review all police shooting cases upon the conclusion of the MPD's initial investigation. The Attorney General's Office may ask for additional investigation to be conducted before taking the case to the grand jury for criminal prosecution, or declining to prosecute.

⁶ Felony Response responds between 4:00 pm and 8:00 am until relieved by Homicide investigators.

The MPD conducts concurrent criminal and administrative investigations. The completion of administrative investigations by ISB – as to whether the officer violated the department’s use of force policy – is handled as described for other serious policy violation complaints against officers.

Currently, the three cited police shooting circumstances justifying response by specific investigative units and notification of key command-level personnel all hinge on marksmanship, rather than the intent of the shooter. When an officer or a suspect fires a weapon with the intent of striking a person, the intensity of the investigation should not be regulated by whether the target was struck. If, as ISB staff indicates, all police shooting incidents are in fact handled in the same manner, the MPD policy should be modified to reflect that regardless of whether an officer or other person is actually shot, investigations will be handled identically.

Response to Resistance⁷

Whenever an MPD officer responds to resistance with a use of force, he/she must complete a Response to Resistance Form outlining the circumstances of the encounter. The forms are reviewed at the various levels of the chain of command. They are then routed to the Inspectional Services Bureau, where the elements of the event are examined and categorized. The ISB conducts an annual review that focuses on:

- Was policy adhered to?
- Was the policy clearly understandable and effective for this incident?
- Is the current response to resistance training adequate?
- Is the current equipment adequate?
- Are there tactical issues that should be addressed in training?

The table below shows the data collected by the Inspectional Services Bureau from 2009, 2010 and 2011 from the Response to Resistance forms.

⁷ “Response to Resistance” is the title of the MPD policy governing use of force. The term “response to resistance” is used to match local usage.

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Response to Resistance Data 2009-2011			
Year	2009	2010	2011
Number of Reports	653	887	892
Reported Type of Force Used			
Physical force	219	565	481
Chemical Agent	368	301	253
Physical Force/Chemical	27	1	95
Physical Force/Chemical/Baton	-	-	12
Physical Force/Baton	-	-	12
Chemical Agent/Baton	-	-	9
IDS	13	4	3
Baton	23	16	23
Not Specified	3	0	4
Reported Reason			
Protect Self	331	527	613
Protect Others	92	232	321
Effect Arrest	31	83	738
Protect Suspect	34	39	225
Other	148	0	25
Total	636	881	1922
Reported Charges on Suspects			
Resisting/Evading	400	616	599
Misdemeanor	395	555	613
Assault	169	263	228
Felony / not assault	130	153	214
Traffic	44	76	46
Emergency Commitment	72	45	49
Drugs	60	111	107
Weapons	21	29	38
Robbery	1	0	9
Theft	2	0	0
Domestic Violence	1	0	0
Total	1295	1848	1903
Reported Suspects Armed			
Objects	17	29	14
Handguns	13	11	17
Rifle/Shotgun	-	7	2
Knives	12	14	12
Unspecified	-	-	1
Total	42	61	46
Officer Injuries			
Physical Force	77	137	101
Chemical Agent	0	35	7
Baton	0	2	7
Physical Force/Chemical Agent	-	-	25

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Physical Force/Chemical/Baton	-	-	6
Physical Force/Baton	-	-	11
Chemical Agent/Baton	-	-	7
Total	77	174	164
Suspects Injured			
Physical Force	122	187	178
Chemical Agent	78	129	104
Physical Force/Chemical Agent	4		52
IDS	2	1	2
Baton	11	6	8
Physical Force/Chemical/Baton	-	-	10
Physical Force/Baton	-	-	8
Chemical Agent/Baton	-	-	3
Chemical Agent/IDS	-	-	1
Unspecified	-	-	2
Total	217	323	368

Comparisons and trends in the use of force by Memphis officers are difficult to discern in this data for several reasons.

- In the 2009 ISB report two recommendations were made. They were to provide additional training to officers in the use of alternatives to chemical agents on prisoners handcuffed and in police vehicles and to encourage supervisors to check the forms for thoroughness and accuracy, especially for the “Other” category on the reasons for the reason for response to resistance.

From 2009 to 2011, the use of chemical agents began to recede, perhaps in response to the ISB recommendation that additional training should be provided to officers in the use of alternatives to chemical agents. In 2009, 59% of the reported force alternatives were chemical agents, in 2010 chemical agents were reported 34% of the time and in 2011 41% of force alternatives were reported to be chemical agents.

The other 2009 recommendation appears to have contributed to an increase in the number of use of force reports filed. Increased vigilance by supervisors as to the accuracy and thoroughness of reporting procedures probably accounts for an increase in the number of reports completed and decreased reports with “other” as the reason force was necessary.

The ISB Response to Resistance report in 2010 offered three recommendations for changes to the form. They were: to be sure that the form reflected the officer’s full name; that the form reflect the seriousness of injuries to officers and subjects; and that the form

ask officers to identify the actual weapons used against them rather than just indicating “weapons” As a consequence of these recommendations increased information was available in 2011.

In 2011, for the first time, officers reported multiple types of force used, indicating physical/chemical or physical/chemical/baton. Officers also reported more reasons for the use of force over the previous years since they could report more than one reason for the response to resistance.

While incidents of use of force reports decreased by approximately one-third from 2009 to 2010 and 2011, officer injuries increased during the same time period. Officer injuries were reported in 12% of the 2009 reports, in 20% of the 2010 reports and in 18% of the 2011 reports. During the same time period there was an upward trend in suspect injuries from 33% in 2009, to 36% in 2010 and to 41% in 2011.

These officer and suspect injury increases may be an unintended consequence of decreasing the emphasis on the use of chemical agents. Physical force brings the officer and the suspect into close physical contact and increases the risk of injury. In 2009 34% of the force alternatives recorded were physical contact; by 2010 the percent had increased to 64%. Combining all of the 2011 categories that contain physical force as an alternative shows that 67% of the reported responses to resistance involved physical force.

Reasons for use of force are consistent over the three years. Resisting, evading, and misdemeanor arrests accounted for the majority of the charges placed against individuals.

Findings – Complaints Against Officers and Internal Investigations

With the exception of the burdensome requirement that complaints should be signed and notarized the MPD has adequate procedures in place for the public to file complaints against employees for misconduct or dissatisfaction with police service. The MPD also has adequate policies in place to accept and investigate internally generated complaints against officers. Department actions that take place after a complaint is received or an internal incident generates an investigation are governed by a set of policies related to the Internal Affairs unit’s responsibilities, the officer response to resistance policy, and officer-involved shooting investigations policy. The policies are adequate in managing

the complaint and internal affairs investigative process. If implemented, the following recommendations will improve the complaint/internal investigative process in the MPD.

Recommendations

1. ***The MPD should not demand any requirement for complaint submission that is not legally mandated and further should ensure that it accepts complaints without any inference or suggestion that retribution would follow if a complaint against an officer is non-sustained.***

The MPD tells the public that all citizen complaints must be signed and notarized. Some police agencies require this so as to discourage untruthful or frivolous complaints. However, it can have a chilling effect on the forwarding of legitimate complaints by persons who may be intimidated by such a demand. However, this does not suggest that a fabricated complaint could not be prosecuted.

2. ***The MPD should clarify the responsibilities of the Internal Affairs unit.***

The department's Internal Integrity Policy spells out that the Internal Affairs Squad is responsible for the investigation of policy violations. The Response to Resistance Policy (Section 8, Chapter 2, page 9 B. & C.) states that ISB will only investigate compliance with the department's Deadly Force Policy, and the Homicide or Felony Assault Unit will handle the criminal investigation. The investigative protocol clearly addresses police shooting incidents, but similar specificity does not exist for other types of force investigations – including deadly force other than by a firearm.

When any force investigation is initiated, the intent is to determine if the officer's actions were justified or amounted to a policy violation. However use of force other than discharging a firearm can sometimes meet the criteria for criminal prosecution.

In practice, these internal policy investigations are handled by the Internal Affairs Squad. If there are indications of criminal behavior they may be taken to the Attorney General's Office for prosecutorial review. The policy should be clarified and should better describe the protocol for handling of all force investigations – shootings, other deadly force (such as unauthorized head strikes by impact weapons), and all other force investigations.

- 3. *The MPD should revise its Response to Resistance policy to reflect that chemical weapons and impact weapons may result in deadly force when misapplied.***

The Response to Resistance Policy (Section 8, Chapter 2, and page 2 I.) provides definitions for Deadly Force and for Soft/Hard Empty Hand Control. These are all in the Response to Resistance Continuum on page 3. However, the other Responses to Force, including Chemical Agents and Impact Weapons – which when misapplied can amount to deadly force – are omitted from the definitions. The policy would be strengthened by illuminating the deadly potential of other responses on the continuum, and including their definitions.

- 4. *The MPD should modify policy to reflect that all officer-involved shooting incidents are investigated in the same way – regardless of whether a person is actually shot.***

Current policy states that when a police shooting incident does not result in an injury, (when an officer is shot at – or when an officer shoots at someone), Felony Assault Bureau investigators, rather than Homicide, respond to conduct the criminal investigation. **However, ISB managers report that marksmanship does not dictate the importance of an investigation, and that in practice all police shooting investigations are handled in the same manner.**

- 5. *The MPD should consider requesting that personnel from the Attorney General's office respond to the scene of officer involved shootings.***

Rather than waiting until police shooting investigations are completed before consulting with the Attorney General's Office as to next steps, MPD should consider asking the AG's office to have an AG representative respond to the scene to ensure first-hand knowledge of the case from the beginning.

Determination of Complaint Investigation Responsibility

The question posed by the City related to work station complaints was:

- 3. Does the department use an efficient and effective system to determine whether internal investigations are assigned to supervisors or to internal affairs investigators?*

Most citizen complaints received by the MPD are for rudeness or lax courtesy. These are referred to “work station” or “walk-in” complaints and may be received at any of the department’s facilities with public access or by Internal Affairs. When complaints are received, Internal Affairs assesses the complaint for its potential to involve a policy infraction or an allegation of criminal misconduct. Policy complaints are handled by the Internal Affairs Squad and criminal allegations by the Security Squad. If no allegations of policy violations or criminal violations are present, the matter can be handled in the field – at the officer’s work station. Unlike policy and criminal complaints, work station complaints do not need to be notarized. When complaints are field-appropriate, they are directed to the officer’s lieutenant colonel, who assigns the case to a supervisor one rank higher than the subject of the complaint. These cases must be completed in 20 days; however, an extension can be requested. Completed cases are directed back to Internal Affairs. If an investigation is late, Internal Affairs sends a reminder to the lieutenant colonel.

Last year 454 complaints were logged. Information relative to these complaints is entered into an Early Intervention System (EIS) database by the designated personnel at the unit where they are investigated. Although complaint data is entered, there is no indication that formal analysis takes place to look at patterns or trends in complaints.

The department also accepts complaints by means of a “hotline” through which the public can report misconduct by officers. Officials interviewed by PERF have mixed beliefs as to the credibility of the information generally received anonymously over the hotline. Some feel it is too easy for anyone disgruntled with an officer or the department as a whole to allege wrongful conduct anonymously. That said, the ISB commander states that good information and the initiation of valid complaint cases have come from the hotline.

Finding – Work Station Complaints

The department’s system for assessing the nature and seriousness of complaints brought by citizens and ensuring they are handled in the most effective manner at the most appropriate level is appropriately described in the department’s directives. There is a process to sort and route policy, criminal, and discourtesy complaints to the best suited investigative personnel and to ensure a timely turn-around. However, more should be done to determine what may trigger complaints. Analysis should be performed to ascertain whether complainants have common characteristics to identify the most common causes of dissatisfaction and to determine whether there are other

commonalities, such as precinct, day of the week, time of day, whether an arrest was made, etc.

Recommendations

6. *The MPD should clarify the differences in the usage of the terms “work station” and “walk-in” complaints.*

The minor complaints of discourtesy or rudeness were noted to be interchangeably referred to as either “work station” or “walk-in” complaint. Though this is not a major issue, it is confusing in that it may not be clear whether the term refers to the manner of reception or where it will be investigated. For the sake of clarity, “walk-in” should be specifically descriptive of complaints brought to the MPD’s attention in person, whereas a “work station” complaint should refer to a citizen’s less serious complaint approved for investigation by the officer’s immediate supervisor.

7. *The MPD should capture the common themes of work station complaints to determine if more global corrective actions should be taken.*

Although workstation complaints do not include allegations of the most serious misconduct, they do represent significant sources of disapproval with police service. Collectively the information contained in these complaints offers MPDs managers an insight to the daily contacts, and a path to identify new opportunities and missed opportunities to have officers engage the public in positive ways rather than generating complaints against generating complaints about officers’ demeanor. The department captures the aggregate number of work station complaints, but should also assess them to identify common themes of citizen dissatisfaction with police service, communities where better relationships are needed, and the types of interactions where officer actions should focus on de-escalation. Information from these complaints should be considered when designing officer training and community initiatives.

Disciplinary Outcomes

The following question related to disciplinary outcomes was posed:

4. How does the department determine disciplinary outcomes? Is the MPD's process fair and consistent?

The MPD's disciplinary policies and practices are described in the Internal Integrity policy (section 2) of the policy manual, under the heading of Internal Discipline. The discipline policy addresses the following issues:

- Appeal/grievance
- Disciplinary action
- Employee support unit
- Internal reporting of police misconduct
- Hearings
- Issuance of Statement of Charges
- Notice of Hearing
- Statement of charges
- Work status.

The policy describes a disciplinary process and the authority at various levels within supervisory and command ranks to administer discipline.

The MPD does not provide a disciplinary matrix that formally guides its command personnel in ensuring the fairness of discipline for the violations sustained, and to necessary to bring disciplinary evenness for like violations (with similar circumstances) committed in different commands. A sample disciplinary matrix is provided on the following page.

Within the MPD system, lower ranks have less authority to impose discipline and this helps to ensure that discipline is not excessive. It is also recognized that once the review process reaches the upper management level (Lt. Col and Deputy Chief), informal discussions and consultations reduce the likelihood of widely disparate discipline in similar cases. Nevertheless, reliance on a formal disciplinary matrix will result in greater uniformity.

Disciplinary Matrices

Many police departments use what is commonly referred to as a disciplinary matrix to ensure consistency in discipline across the department. Consistency—ensuring that officers are disciplined in the same manner for violations of the same rules—is important in maintaining the integrity of the disciplinary system. Equal treatment helps to prevent allegations of favoritism or discrimination.

A disciplinary matrix generally includes four components. They are:

- Policy Statements – An overall description of department practices with regard to discipline.
- Violation Tiers – A comprehensive list of the most common rules violations that may occur in the department.
- Sanctions – A standardized set of sanctions that will be applied to similar offenses.
- Aggravating and Mitigating Factors – A description of exigent circumstance that may justify deviating from the sanctions normally applied to specific types of rules violations.

Following is a sample disciplinary matrix policy PERF has developed through its work with other departments. .

Sample Disciplinary Matrix Policy

I. Purpose

- A. The purpose of the Disciplinary Matrix Policy is to establish guidelines by which discipline will be imposed within the Police Department. Use of the matrix provides all members of the department the assurance that discipline will be dispensed in an equitable manner while providing the management discretion necessary to maintain the fairness and the good order of the agency.

II. Introduction

- A. An effective discipline system is one that is based on the principles of fairness and consistency. It should reflect the values of the Department while protecting the rights of both officers and citizens. The system should strive to encourage respect and trust among members of the department and the community in overseeing the

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department's employees' adherence to laws, policies, procedures and directives. The establishment of a Disciplinary Matrix System is intended to create a culture of public accountability and promote individual responsibility while maintaining the highest standards of professionalism in policing.

B. The Disciplinary Matrix is designed to accomplish the following goals:

1. Better delineate conduct categories for specific policy violations.
2. Outline specific discipline ranges within those categories and for specific policy violations based upon the severity of offenses.
3. Give notice to officers and the community of the likely sanction for a particular violation.
4. Identify acceptable mitigating and aggravating circumstance requirements.
5. Provide the framework for consistent and fair discipline.

III. Definitions

- A.** Commendations - Documented incidents of outstanding performance and service to the department and the community occurring in the previous five-year period.
- B.** Circumstances (surrounding an incident) - Factors such as whether the employee was involved in legitimate city business (i.e., responding to a call, making an arrest, etc.). Was the employee acting in the best interest of the department/ community and/or with due regard for safety? Did the employee recklessly disregard factors that a reasonable person would have considered, or did the employee act negligently?
- C.** Culpability - An evaluation of the behavior should consider whether the employee acted intentionally or with knowledge that the behavior amounted to a violation of policy.
- D.** Disciplinary Action – Disciplinary action may take one of the following forms:
1. Verbal Reprimand - A discussion between the supervisor and the employee where the employee is advised and cautioned about unsatisfactory work performance or misconduct. Verbal reprimands cannot be grieved and will not be placed in the employee's personnel file.
 2. Written Reprimand - A written documentation to the employee from the supervisor where the employee is advised and cautioned about his/her unsatisfactory work performance or misconduct. Written reprimands will be placed in the employee's personnel file.
 3. Suspension - Temporarily prohibiting an employee from performing his/her

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duties as a result of the employee's unsatisfactory work performance or misconduct. The suspension period shall be without pay. Documentation regarding the suspension will be placed in the employee's personnel file.

4. Relinquishment of Days Off - The Chief of Police may allow an employee to use accrued leave up to four days as part of the recommended suspension.
 5. Demotion - A reduction of the pay range of an employee and a change in job duties and responsibilities as a result of the employee's unsatisfactory work performance or misconduct. Documentation regarding the demotion will be placed in the employee's personnel file.
 6. Dismissal - An involuntary separation from employment initiated by the employing authority as a result of the employee's unsatisfactory work performance or misconduct. Documentation regarding the dismissal will be placed in the employee's personnel file.
- E. Employee Attitude - What is the employee's attitude toward the behavior? (Discipline can only be effective if employees accept responsibility for their actions and continually strive to conduct themselves within the guidelines of department policy.)
- F. Liability - Actions that could cost the city money in civil liability defense.
- G. Performance Evaluations - Includes both scheduled and unscheduled documentation of an employee's work habits, productivity, efficiency and effectiveness.
- H. Prior Discipline - Previous sustained allegations and associated levels of discipline (within time limits) and any other notations regarding the specific behavior in question as outlined in supervisory notes (e.g., recent training and/or warnings specific to the behavior).
- I. Rank - Employees of higher rank may be held to a higher standard of conduct and knowledge of departmental policies.
- J. Seniority – The tenure an employee has as a member of the department may be weighed against the behavior in question based upon the factors surrounding the incident, such as experience, training, culpability, and circumstances of the event.
- K. Training - Any instruction or guidance specific to the behavior in question may be considered. Such activities may be as simple as a review of policy or as formalized as structured classroom or other job-related training. All training considered must be noted in supervisory notes and/or department training records.

IV. Disciplinary Matrix

- A. The Police Department shall create and maintain a Disciplinary Matrix that will be

maintained by the Internal Affairs Office. The Discipline Matrix will outline, for all employees, guidelines for discipline for specific types of policy violations so that discipline for sustained policy violations may be conducted in a fair and consistent manner.

- B.** All final decisions on discipline rest with the Chief of Police.
- C.** The matrix will be reviewed and revised as necessary on an annual basis by Internal Affairs with the consultation of the Chief of Police to ensure that it represents any changing organizational and societal values.
- D.** Multiple sustained violations in a lower category, occurring over a specified period of time, automatically move the discipline into the next higher matrix category.

III. Disciplinary Guide

Unacceptable conduct has been divided into three types of offenses according to its seriousness. The severity of the discipline chosen must fit the seriousness of the offense. If there are mitigating circumstances, supervisors may request a reduction in the discipline, but they must state their reason for such action.

Procedural steps for imposing discipline are set out below. The failure of a supervisor to follow these procedural steps will not, by itself, make the discipline invalid or improper, but an employee may separately grieve a supervisor's failure to follow appropriate procedure, provided that such grievance is filed in a timely manner. The sole remedy for such grievance shall be correction of the procedural error.

The following are examples of offenses within each disciplinary category. The offenses listed are not intended to be all-inclusive.

A. Category I Offenses (Examples Only)

- Beat, Leaving without supervisory approval.
- Court, Failure to Appear (FTA).
- Equipment, Failure to properly control or maintain.
- Equipment, Unauthorized.
- Grooming regulations, Violations of.
- Mishandling or improper preparation of criminal or traffic case resulting in prosecutorial declination to prosecute or dismissal.
- Parking, Illegal parking of police vehicle.
- Police vehicle, Failure to properly maintain.
- Prisoners, Failure to properly secure, search, handcuff, seatbelt.
- Reports, Failure to submit.

- Response status, improper or unauthorized emergency response.
- Sick leave abuse.
- Sleeping on duty.
- Tardiness.
- Traffic laws, Violation of minor traffic laws.
- Uniform regulations, Violations of
- Unsatisfactory performance.
- Other similar violations.

B. Category II Offenses (Examples Only)

- Abusive/demeaning language.
- Absence without prior notice.
- Calls for Service, Failure to respond and/or properly clear.
- Conduct unbecoming.
- Discourtesy.
- Firearms, Unattended, careless handling.
- Harassment.
- Hot pursuit, Unauthorized.
- Leaving sector or district without supervisory approval.
- Misconduct, to other officers or citizens.
- Police vehicle operations, flagrant violations (e.g. excessive speed).
- Prisoners, Failure to properly search or secure resulting in escape or discovery of weapon.
- Other similar violations.

C. Category III Offenses (Examples Only)

- Alcohol-related offenses.
- Criminal law offenses.
- Drinking alcohol on duty.
- Drug-related offenses.
- Firearms violations, Careless handling resulting in injury.
- Firearms violations, e.g., unreported discharges.
- Force, Excessive use of.
- Insubordination.
- Operating motor vehicle while privilege revoked or suspended.
- Police vehicle, Operation of after consuming alcohol and/or drugs.
- Reports, False.
- Statements, False.
- Engaging in sexual activities while on the job or on City property.
- Other similar violations.

D. Ranges of Disciplinary Actions

1. Group I Offenses - Disciplinary action shall range from a verbal reprimand to five days off without pay.
2. Group II Offenses - Disciplinary action shall range from six days off without pay to 30 days off without pay.
3. Group III Offenses - Disciplinary action shall range from 30 days off without pay with or without demotion to dismissal.

The ranges of discipline shown are examples. The exact discipline for each range should be established by the department, but there must be consistency to ensure like discipline for like infractions. For example, two identical first-time Group II infractions without any mitigating circumstances should not result in one being disciplined with six days without pay and the other with 20 days without pay.

4. Two sustained violations of the same offense within a one-year period will cause the disciplinary action recommendation to advance to the next higher category.

VI. Documentation of Department Disciplinary Action

- A.** To document the department's consistency in discipline and to demonstrate transparency in such matters, the Internal Affairs Officer shall maintain and post a running list of all disciplinary actions imposed by the department. This document shall consist of the following information:

1. Date of discipline;
2. Violations sustained;
3. Mitigating factors; and
4. Discipline administered.

- B.** Making this information available demonstrates the department's commitment to fairness and consistency in issuing similar punishment for similar infractions and that there is not inconsistency in the treatment of members due to rank/position, race, gender, or time in service.

- C. The department should incorporate this information into an annual report for distribution in the community to demonstrate the organization's commitment and ability to maintain a fair and equitable self-disciplinary process.

Labor Agreement Regarding Discipline

The current agreement between the city of Memphis and the Memphis Police Association (MPA) contains language on discipline. While the agreement recognizes the fundamental right of commanders to discipline officers, most of the language deals with how the process is supposed to work. The language includes definitions of the types of discipline, conditions regarding continued work, proper notice of charges and due process provisions. As the MPD is bound to the contractual requirements, department policies and the MPA agreement are consistent.

The MPD has a policy in place that defines the level of discipline that can be administered by various levels of supervisory/command personnel; however, there is no systematic process in place that ensures that similar offenses are treated in a similar fashion. While penalties applied in disciplinary cases may be uneven, if the process is carried out in conformity with policy and the MPA labor agreement, the disciplinary process should be fair and consistent. However, improvement is needed. The implementation of the following five recommendations will enhance the disciplinary process.

Recommendations – Discipline

- 8. The MPD should develop a disciplinary matrix to ensure that similar discipline is applied to officers in similar situations across the department and over time.**

The department is correct to examine the seriousness of the infraction and surrounding circumstances as well as prior discipline. But there is no mention of the necessity to ensure that similar discipline is issued for similar infractions – with allowances for mitigating circumstances and prior sustained incidents. For instance, if two officers in different districts were charged with first offense sleeping on duty, they should receive

the same penalty. If there are mitigating factors, such as repeated offenses, the officer charged with the repeated offense would receive a harsher penalty,

Many departments rely on a disciplinary matrix that categorizes infractions according to seriousness and offers a range of recommended discipline. Repeated infractions can be elevated to a higher level of discipline. In this way, the department can better ensure fairness and evenness of discipline among different duty assignments and commanders.

9. *The MPD should publish disciplinary statistics.*

When there is a lack of uniformity in discipline, police managers can expect rumors and complaints that the inconsistency is due to race, gender, favoritism, or other improper reasons. Many departments avoid such allegations through the use of a disciplinary matrix as a guide for discipline that fits specific infractions. Recognizing that even a matrix can allow a degree of discretion to commanders, the department should strive to be fair, consistent and open in these matters. Some departments post periodic reports of all discipline handed down. These postings do not identify officers, but they do list rank, race, gender, the infraction(s), any mitigating factors, whether the infraction is a repeat infraction, and the discipline handed down. These reports, issued every half year, demonstrate the department's commitment to transparency and help to show that discipline is based on the severity of infractions and not on inappropriate factors.

10. *The MPD should ensure that all supervisors/commanders that have the power to issue discipline are appropriately trained to do so.*

Supervisors that have authority to discipline granted by department policy should have appropriate training on policies and procedures, and on the principles of progressive discipline and using discipline as a tool for performance improvement.

11. *The MPD should conduct an analysis of the types and causes of disciplinary actions.*

In many cases, discipline is the result of officers failing to perform in a way that is required by the department. However, other factors may play a role. The department should make ongoing determinations of whether the causes of discipline may be related to hiring practices, lack of training, ineffective supervision, or a failure to provide officers with clear expectations.

The fundamental reasons for discipline are to change employee behavior and ensure future compliance with policies, rules and regulations. Sometimes the disciplinary approach taken can be developmental, but usually it is punitive. Analytical knowledge of how employees perform after discipline will allow department officials to refine how they administer discipline to achieve beneficial outcomes.

Citizen or Employee Appeal

The City posed the following question related to an appeals process.

5. What procedures are in place for citizens to appeal and/or for employees to appeal or initiate a grievance process?

Provisions regarding the filing of an appeal/grievance by officers regarding discipline are contained both in MPD policy and the City's MOU with the MPA. The MPD's Internal Integrity Policy contains specific language regarding the grievance procedure. The policy is provided in Appendix A of this report.

The City's Memorandum of Understanding with the Memphis Police Association also contains a procedure whereby grievances may be filed when there is a dispute over contract language. Since the MOU contains specific language regarding the disciplinary process, grievances under the terms of the contract can also be filed.

The MPD has no internal procedure in place for citizens to file grievances over the result of a case closure or disciplinary action. However, when complaint investigations are completed and complainants are notified of outcomes, they have the opportunity to appeal the department's decision to the Civilian Law Enforcement Review Board established outside of the MPD. The board is composed of nine members of the public, appointed by the Mayor and approved by the City Council. The board has "the power to receive, investigate, hear cases, make findings and recommend actions." The stated mission of the board is "to investigate citizen complaints of misconduct in order to enhance and promote a better working relationship between the City of Memphis Police Department and the citizens of Memphis."

As is common among law enforcement agencies, citizen complainants are provided timely information by MPD as to how a complaint case was closed and what that closure type means. Rarely, if ever, are complainants informed as to the discipline imposed on an officer. Most departments acknowledge the misconduct, and that the matter has been properly addressed, but the protected "personnel" information – including details surrounding discipline, often are not divulged.

Finding – Citizen or Employee Appeal

There are adequate provisions in place for an employee to appeal or grieve a disciplinary decision. There are no formal systems in place for a citizen to appeal a disciplinary

decision directly to the police department in a case where they have standing. Citizens do have an opportunity to appeal disciplinary action to the Citizens Law Enforcement Review Board that is independent of the police department. Directing appeals of disciplinary actions to a body outside of the police department is a good approach, but the number of appeals made to the review board has not been tracked in the police department.

Reporting Complaint Outcomes

The City posed the following question regarding complaint outcomes.

6. How does the department report complaint/disciplinary outcomes to the general public?

Finding – Reporting Complaint Outcomes

The Memphis Police Department does not routinely report disciplinary outcomes to either the public or to department personnel. Both internal and public disclosure of generic⁸ disciplinary case closure types can increase department transparency. Internally, such reporting can provide employees with the knowledge that the department takes violations seriously. Externally, such reporting can demonstrate to the community that the department is concerned about officer misconduct and strives to impose sanctions on violators. Implementation of the two recommendations below will create both internal and external processes for releasing information about disciplinary outcomes.

Recommendations – Reporting Complaint Outcomes

12. The MPD should compile and release disciplinary statistics internally and externally on a regularly scheduled basis.

Regularly releasing high-level statistics regarding discipline in the department will increase the transparency of the department's disciplinary processes. The release of discipline statistics will also increase the public's awareness that appropriate discipline is taking place.

A regular release of discipline statistics should be done at a high level, so that no officers can be easily identified. The information could be presented in tabular form, and should include, at minimum, the following information:

⁸ Disciplinary actions are often protected from public disclosure, yet a generic, non-identifiable release of information about all discipline imposed over time will demonstrate that the department is doing its job in while being fair and consistent on discipline.

- Offense types
- Number of officers disciplined in each offense type category.
- Average penalties imposed by offense type.

The MPD can consider different ways of making the information available. The best approach may be to publish the statistics on its web site after appropriate public notice that the information is available.

13. The MPD should develop a formal process for notifying citizens filing complaints against officers of the disposition of their complaints.

The transparency of the MPD discipline process will be improved if those filing complaints against officers are notified of the outcome of their complaints. While such notifications currently occur in some cases, complainant notification should be made a formal and systematic part of the discipline process.

Identifying Officers at Risk

The question posed by the City regarding the identification of officers at risk is as follows:

7. What methods does the department have in place for supervisors to identify officers at risk of possible misconduct as early as possible, and how is corrective action taken? Is there a formal “Early Intervention” or “Early Warning” system in place? How well is it working?

An early intervention system is a data-based police management tool designed to identify officers whose behavior is potentially problematic, and to guide them toward some form of intervention if any corrections are determined to be needed in their performance. The intent is to look for warning signs of a pattern of behavior that could lead to a situation that would warrant formal disciplinary action. The system alerts the department to these individuals so that intervention, often in the form of counseling or training, can be used to interrupt the pattern of problematic behavior.

The MPD currently has an *Early Warning System*⁹ Policy that is in the midst of being replaced with a new Performance Enhancement Program (PEP) Policy that is still in draft form. The department procured an I/A Pro software system and added a “Blue Team” component. As is typical for most such programs, data entries are made whenever an officer is the subject of a complaint or allegation of misconduct, poor performance, or departmental policy infractions. The new “Blue Team” component permits work station entry of both positive and negative information about officers. Supervisory entries can be made via the supervisor’s PDA. Reportedly, reviews of critical incidents have resulted in an upswing of in officers being referred by management for intervention.

In the PEP Overview, the department recognizes its responsibility to its members and the community to identify and assist members whose behavior shows signs of stress and problems that impact work performance. It clearly defines PEP as a non-disciplinary intervention system intended to enhance performance through training, coaching and professional development. Moreover, no assessment resulting from any PEP action may be used to aid or retard a member’s promotional status.

⁹ MPD’s current policy refers to an “Early Warning System” rather than the term “Early Intervention System” which better describes the department’s intent and which is the term preferred by most police agencies.

According to the draft policy, each MPD Deputy Chief bears responsibility for adherence to the program within his/her own command and, contrary to the notion that PEP is a non-disciplinary program, makes any disciplinary decisions that may result. The Deputy Chiefs report PEP issues, actions, and statistics to the Deputy Chief of Administration. The reviews resulting from PEP are not to be limited to risky behaviors of individual officers; PEP also is designed to prompt quarterly meetings of an advisory panel whose function is to review data for department-wide patterns of problematic performance, evaluate the effectiveness of intervention strategies used and offer innovative or alternate strategies to commanders, guide the future of the PEP, and recommend policy changes as a result of problems that PEP brought to light.

As part of the new PEP, the department is developing a list of 17 performance indicators to be tracked and new thresholds (the aggregate value of indicators which trigger PEP review and alert commanders to officer behavior that could put them at risk). The proposed thresholds that would trigger an officer for review are:

- 2 shooting incidents in 18 months.
- 2 vehicle pursuits in 12 months.
- 4 sick occurrences in 12 months.
- 1 civil lawsuit in 18 months.
- 2 on the job injuries in 18 months.
- 2 negative Officer Behavior Reports (OBRs) in 12 months.
- 1 management referral in 18 months.
- 4 workstation complaints in 18 months.
- 3 personal conduct complaints (sustained or not-sustained) in 18 months.
- 2 sustained personal complaints in 18 months.
- 3 use-of-force complaints (sustained or not-sustained) in 18 months.
- 2 sustained use-of-force complaints in 18 months.
- 3 car crashes (chargeable or not-chargeable) in 18 months.
- 2 chargeable car crashes in 18 months.
- 2 sustained dependability complaints in 18 months.
- 4 combined complaints (any category, sustained or not-sustained) in 18 months.

- 2 sustained complaints plus 1 not-sustained complaint (all 3 can be from any category).

In an effort to merge the current and proposed systems fairly, the proposed thresholds have been applied to officers in the current system. This identified 27 officers who would be identified for review under the proposed thresholds.

The draft policy calls for authorized system users to make both positive and negative entries on a daily basis to ensure prompt identification of threshold breaches and thereby allow immediate review for an at-risk behavior pattern. When a pattern seems to exist, the officer's workstation commander is notified. It is important to note that the department recognizes and has made provisions for those in the review process to consider mitigating circumstances that could justify modifying the actions normally expected to be taken. When the workstation commander concurs that there is reason to proceed, the matter is assigned to the officer's supervisor, who must within 21 days develop a performance improvement plan that addresses the problem.

The performance improvement plan must be documented and the program coordinator must be formally informed. Any officer who refuses to accept the improvement plan or who fails to cooperate will be sent to a counseling panel. This is also the outcome for an officer who fails to modify his/her behavior and generates another tracked indicator.

Resource options included in the PEP Policy that are accessible for supervisory referral include a wide variety of internal options, such as: training in anger management, cultural awareness, remedial programs in driving and firearms, and communications skills; training in tactical responses, defensive tactics, defusing incidents, and supervisory counseling; and outside options such as counseling about drugs, gambling, financial problems, grief, and many other issues.

Findings – Identifying Officers at Risk

MPD's existing Early Warning System and the Performance Enhancement Program (PEP) both are automated systems in which various types of officer conduct are entered into the system, and officers are flagged for intervention if certain performance thresholds are met. The new PEP system will improve the department's ability to identify potentially problematic behaviors in a fair and consistent manner.

If implemented, the following two recommendations will enhance the capabilities of the PEP system.

Recommendations – Identifying Officers at Risk

- 14. The MPD should amend the policy governing its Performance Enhancement Program to state that an alert by PEP will not result in discipline. Discipline should only result from the merits and mitigating circumstances of sustained cases.**

The PEP draft policy is contradictory in that PEP is described as non-disciplinary, yet the definition of “Discipline” in the policy as it relates to PEP is: “Corrective actions intended to address inappropriate behavior. For purposes of this policy, discipline will only be imposed when intervention has been ineffective or when the member refuses to cooperate in the intervention process.”

Given that the thresholds used to dictate review and the design of a Performance Enhancement Plan can include a mix of sustained and non-sustained complaints, and subsequent non-sustained complaints could be construed to demonstrate failed compliance with the plan on behalf of an officer, discipline could be recommended because of unsubstantiated complaints. This is not to suggest that the department should be reluctant to take appropriate disciplinary action for sustained complaints or violations of policy. But as an example, a pattern of unsubstantiated complaints can sometimes be attributed to retaliation against a hard-working officer working in a difficult assignment.

The MPD’s command-level personnel need to be aware of these anomalies and address them appropriately. In fact, one factor spelled out in the policy to be considered when conducting a performance review is: “How does the PEP indicator history of the member compare with other members in similar assignments?” Nevertheless, the policy should acknowledge that only the merits and mitigating circumstances of sustained cases, not an alert by the PEP, will result in discipline. The result of a PEP alert that does not involve a new sustained case should be focused on outreach to help the officer to avoid any actions that would justify discipline.

- 15. The MPD should encourage supervisors to not only rely on the PEP system to monitor the well-being of their subordinates. Good supervisors should**

be aware of difficulties their subordinates may be encountering through daily, informal interactions.

The PEP, like other good Early Intervention Systems, is a necessary backstop in a large police department to ensure that problematic behavior does not go unnoticed until it evolves into a serious problem for the officer, the department or the community. It is not, however, a substitute for good supervision. Alert and dedicated supervisors should most often be able to recognize behavioral, emotional, domestic and many other problems affecting their immediate subordinates. The department should encourage its supervisors to maintain a watchful eye toward the well-being of subordinates.

Accountability

The question posed by Memphis regarding accountability is as follows:

8. How does the Memphis Police Department foster accountability at all levels of the organization for performance outcomes?

There are four primary directives that describe departmental expectations for accountability. They are Organization (Chapter 1, Section 1), Rules (Chapter 1, Section 3), Command Officer Notification (Chapter 1, Section 12) and Performance Evaluations (Chapter 1, Section 21). The Organization policy is located in appendix B of this report.

Organization

The policy on “Organization” lays out “Regulation for the Governance of the Police Department.”¹⁰ This section is composed of five subsections:

- A. Service to the Community
- B. Standards of Conduct
- C. Regulations Establishing the Goals of the Department
- D. Regulations Establishing the Goals of Department Members
- E. Use of Discretion by Department Personnel

The “Service to the Community” section clearly states the department’s commitment to work toward a crime-free community and to “enforce the law in a fair and impartial manner, recognizing both the statutory and judicial limitations of police authority and the constitutional rights of all persons.” In this section, the department also recognizes that “diversion programs are effective alternatives available to the criminal justice process” and pledges to assist and support such programs.

The “Standards of Conduct” section provides guidelines for ethical conduct for both civilian and sworn personnel. Within this section is the clear intent that department members will be held accountable for their actions.

¹⁰ The section is included in its entirety as in an appendix to this report.

It is essential that public confidence be maintained in the ability of the Department to investigate and properly dispose of complaints against its members. Additionally, the Department has the responsibility to seek out and discipline those whose conduct discredits the Department or impairs its effective operation. The rights of the member, as well as those of the public, must be conducted fairly, impartially and efficiently, with truth as its primary objective.

Furthermore, the Department intends to reinforce its standards of conduct; the policy states that “all personnel shall receive training concerning ethics biennially.”

The third section, “Regulations Establishing the Goals of the Department,” lays out six goals for the agency. They are:

1. Protection of life and property in the City of Memphis;
2. Prevention of crime;
3. Preservation of the public peace;
4. Enforcement of all laws and ordinances;
5. Arrest of law violators and assembling competent evidence of the alleged violation;
6. Promotion of respect and cooperation of all citizens for the law and for those sworn to enforce it.

In the fourth section, “Regulations Establishing the Goals of Department Members,” three standards are established:

1. Maintenance of the highest standards of integrity and ethics;
2. Excellence in the performance of duty;
3. Maintenance of private lives, which inspire respect and admiration and provide an example for the entire community.

The final portion of the policy that describes standards for accountability is “Use of Discretion by Departmental Personnel.” There is recognition that “It is unrealistic to expect officers to enforce all laws and ordinances regardless of the circumstances that are encountered. Instead, officers must make discretionary choices in enforcement action or inaction.” However, the section also states that “Nothing in this directive is to be construed as permission to disregard any state law, ordinance or rule and regulation of the department. Each officer will be held accountable for their actions in these circumstances.”

Rules

In the directive “Rules,” some 76 standards for officer behavior are described. They cover “Conduct,” “Rewards and Gratuities,” “Response to Resistance and Arrests,” “Firearms,” “Court,” “Reports and Communications,” “Political Activities,” “Uniforms and Equipment,” “Vehicle Operation,” “Civil Cases,” and “Leave, Sickness and Injury.” The directive includes sections on penalties for violation of departmental regulations and on disciplinary procedures. Whereas the sections described above from the “Organization” directive pertain to broad standards for accountability, the “Rules” directive provides very specific standards to which employees are to be held accountable.

Commanding Officer Notification

This directive provides direction for departmental employees on responsibility and accountability for notifications. Employee responsibilities are set out by rank: Officer, Supervisor/Watch Commander, Colonel/Lt Colonel, and Deputy Chief. Although the directive defines the range of notification each rank is accountable for, there is no reference to sanctions if these duties are not carried out. The “Rules” directives, DR 111, “Disobedience of an Order,” does prohibit disobedience “by a member of any lawful written or oral order...”

Performance Evaluations

This directive describes the Department’s process for holding employees accountable for their performance. This process is described more fully later in this report. There are two key points relevant to accountability. First, the directive holds supervisors accountable for their evaluations of their subordinates. Secondly, the directive provides ten evaluation dimensions that vary for each of four levels of employees: the rank of PII (patrol officers), the rank of sergeant, supervisory ranks, and civilian employees.

Findings

This section addresses the question of how the MPD fosters accountability throughout the organization for performance outcomes. Accountability requires that an organization clearly lay out performance expectations for its employees and then describes how it will hold employees accountable for performing as expected.

The Memphis Police Department first approaches accountability by describing the responsibilities of its members in several key directives. High level responsibilities are stated in directive Chapter 1, Section 1: “Organization.” Specific standards for behavior are detailed in directive Chapter 1, Section 3: “Rules.” Further responsibilities for each rank are described in Chapter 1, Section 12: “Command Officer Notification.” These expectations are comprehensive and extensive.

Second, departmental members are held accountable for performance through the disciplinary system and through the performance evaluation system. Both of these systems are described in detail elsewhere in this report as are recommendations to improve these systems.

Although most of the recent officer misconduct incidents have been off-duty, it is clear that some members of the department are not adhering to the expectations set forth for all employees through the department’s written directives. More discussion, reiteration and reinforcement is needed.

The “Organization” directive mandates ethics training for employees every two years. Performance Evaluation is an annual process. However, there is no continuous reinforcement to remind employees of their performance obligations. Employees may become aware of performance obligations when they hear about disciplinary actions, but performance standards are not a regular topic of conversation. Increasing the frequency of discussions about how members of the department are expected to behave will add to the internalization of appropriate behaviors.

Recommendation

16. *The MPD should develop a series of short training modules on ethics and accountability for performance for delivery at roll calls.*

These training modules should be delivered monthly with an outline available for those who miss a roll call. A system for tracking to document that all employees are exposed to the modules should be developed. The development of the modules should involve a cross-section of ranks and assignments so that they are relevant to all employees. Topics should be both the high level obligations that department members have as well their specific accountability to the department’s rules. A session might be composed of reminders of a set of the rules on “Conduct” for example.

Organizational Culture

The question posed by the City RFP related to police department culture is as follows:

9. What processes does the department use to create and maintain an organizational culture that places great value on the highest levels of ethics and integrity?

The four primary directives that govern accountability are listed in the previous section of the report. Those directives also define desired officer behavior with regard to ethics and the type of organizational culture the department wishes to maintain.

MPD's formal description of its expectations of officer conduct is well thought out and demonstrates the department's commitment to the public. It requires MPD members to perform their duties thoroughly, fairly, and uniformly and with the respect of dignity of all. The department also reinforces its commitment to ethical behavior periodically through training at both the recruit and in-service levels. The culture, ethics and integrity of any organization are interrelated, and are significantly impacted by the shared values held by the members of the MPD.

Values and Culture

The organizational culture of a police department is a composite of the behavior and beliefs of police officers in relation to how they do their job, the meaning and purpose of the organization, and the expectations of the community they serve. Culture may include the formal, articulated values of the organization; however, often the values applied to policing have informal origins that are conveyed to new and experienced officers as a way of perceiving the role of the police and how they function operationally. Culture affects all relationships in the organization, whether those relationships are positive or negative. There is a greater potential for unethical and inappropriate behavior on the part of officers when there is a large gap between the formal values articulated by a department and informal values actually present within the organization.

Organizational culture does not change quickly or easily. It is a complex phenomenon that has its roots in almost every facet of the department that affects departmental values. The values of the organization are transmitted either explicitly or implicitly (usually implicitly in most police departments) through:

- Recruitment and selection

- Training
- Supervision
- Leadership
- Performance evaluation
- Discipline

To develop a positive organizational culture, each of those functions must be carried out in ways that support the desired values of the organization. Instead of allowing an informal values system to develop, emphasis on positive beliefs and actions by police officers in relation to their behavior and how they do their job should be instilled at every stage of personnel development.

As previously noted, organizational values are derived from two sources. First are the formal, stated values. Second are informal values, both positive and negative. The Memphis Police Department has stated the following formal values:

- Honesty
- Excellence
- Integrity
- Leadership
- Dignity and Respect
- Recognition and Reward
- Personal Responsibility
- Individual Accountability
- Continuous Learning
- Clarity of Expectations

These values are listed in the department's "organization" policy. There is no explanation of the meaning of each value. For values to be operationalized, they must be defined and instilled in every aspect of the department's operation. An example of a defined values statement for a police department would be:

- Professionalism – Consistently offering a high quality of service
- Integrity – Being honest and respectful

- Teamwork – Working together cooperatively
- Innovation – Being creative and utilizing the latest technology and trends
- Transparency – Having open and accessible communication.

Police officers too often view values statements as simply rhetoric with little application to day-to-day operations. Values should be linked to officer behavior. Simple, clear values statements allow officers to more easily understand their relevance and their connection to officer performance.

Values statements in organizations generally are developed during a comprehensive strategic planning process, as part of a “formula” for guiding the organization. The formula describing the components of strategic direction is:

- Mission – Why an organization exists;
- Values – What the organization stands for;
- Vision – What an organization wants to become.

Operationalizing department values is critical to influencing the culture of an organization. Defining values in the context of department mission and vision is critical.

Findings – Organizational Culture, Values, Ethics and Integrity

The MPD has both policy and training initiatives in place that are designed to maintain an organizational culture that places great value on the highest level of ethics and integrity. It is difficult, however, to assess their overall effectiveness in enhancing and maintaining department culture. There are other techniques the department can use to increase its efforts in improving culture, ethics and integrity. Implementation of the five recommendations listed below will improve the department’s focus on culture, values, ethics, and integrity.

Recommendations – Organizational Culture, Values, Ethics and Integrity

17. *The MPD should revise its values statements for the department.*

The number of statements in other police department is typically fewer than the ten the Memphis Police department has. A shorter list of five or six is easier to internalize. An operational description should be described for each value, similar to the example given earlier.

Too many values statements make them forgettable or less meaningful. A select set of values statements – clearly defined – will allow officers to focus on the meaning of things such as accountability, ethics, integrity, teamwork, and transparency as a way of doing business.

18. The MPD should train and reinforce values at each level of the organization.

Reinforcement should be at periodic in-service training offerings, in policy revisions (stating how the new policies relate to department values), in strategic plans, and as part of the disciplinary process (demonstrating how specific misconduct conflicts with a particular value).

19. The MPD should assess job applicants' personal values during the selection process to ensure that they are in keeping with the department's values.

The purpose of the assessment would be to determine if a candidate's personality and beliefs are compatible with the values held by the department. There are several commercial instruments that are available to assess the values and beliefs of an entry level candidate. The MPD could review instruments with the purpose of finding one that has the capability to assess a candidate's values to make sure they are compatible with the values articulated by the department.

20. The MPD should evaluate the adherence to organizational values of officers, when warranted.

Officers should be evaluated at each step of the career development process, as part of both performance evaluation and promotional assessments. The evaluation should be done on recruits, during performance evaluations, and as a tool in promotional testing process. The evaluation done during the selection process would be through the use of an appropriate instrument. Performance and promotional evaluations regarding values are qualitative, based on supervisor and peer observations.

21. The MPD should commend officer performance in the context of organizational values.

When an officer's commendable performance is related to, or in support of, an organizational value, the relationship between the conduct and the value should be noted in the observed behavior report.

22. The MPD should require supervisors to be attentive to aspects of officers' personal lives that may be indicative of stresses that could lead to misconduct.

On-duty performance of an officer may be indicative of off-duty behaviors and problems. Supervisors should attempt to offer guidance or recommend Employee Assistance when problems are identified that may affect an officer's performance as a police officer. As part of the new "Blue Team" component of the department's early intervention program, supervisors may provide input that describes such behavior and that can then be considered with other factors to determine if and when an officer may be at risk. There is a fine line between what types of off-duty behaviors are an appropriate concern of the department. The most logical approach would be for supervisors to look for off-duty behaviors that may be the cause of poor on-duty performance. Generally, this type of intervention is accomplished through counseling and coaching.

The culture of an organization can change over time. For change to occur, informal value systems should be identified and adjusted by articulating new values and reinforcing them in all areas of the department.

Performance Evaluation

The final question posed related to performance evaluation is:

10. Has the MPD established a useful performance evaluation system that defines and measures the behaviors and actions desired of its employees?

The MPD has a comprehensive performance evaluation system in place. The system is described in Chapter 1, Section 21 of the department's policy manual¹¹. That policy is located in Appendix C of this report. The stated purpose of the performance evaluation is described in the policy as follows:

To successfully serve the citizens of Memphis, the Memphis Police Department must be able to depend on satisfactory work performance from all of its employees. Identifying the strengths and weaknesses of personnel with the intent of improving individual performance levels will improve the overall effectiveness of the department.

The MPD has developed a detailed performance evaluation system, and has implemented it through department policy. The current system is comprehensive and systematic. The department's performance evaluation system contains the following sections:

- Purpose of Performance Evaluations
- Procedures for Administering Performance Evaluations
- Dimensions
- Approval and Review
- Appeal Process
- Performance Evaluation Training
- Evaluation Dimensions and Definitions for all Ranks and Civilians

The performance of all department members is evaluated annually. The performance period is the prior calendar year. Evaluations are to be completed by March 1 of the following year. Performance evaluations are completed by an officer's immediate

¹¹The latest version of the policy was completed in November 2009.

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supervisor. For instance, a police officer is evaluated by his/her lieutenant; Lieutenants are evaluated by Majors, continuing up the chain of command to the rank of Colonel.

Each Rank is assessed on ten dimensions. For example, the MPDs expectations for the rank of PII (patrol officers) are listed in the Performance Evaluation directive. They are as follows.

<u>Memphis Police Department</u>	
Performance Evaluation Dimensions for Patrol Officers	
1.	JOB KNOWLEDGE- Displays knowledge of law, procedures, policies, and techniques as related to the officer's job tasks.
2.	JUDGEMENT - Analytic assessment of a situation and taking necessary and appropriate action after consideration of alternative approaches.
3.	DEALING WITH THE PUBLIC - Ability to deal with the public in a respectful and tactful manner while acting within the scope of the Officer's duty and the law.
4.	RELIABILITY - Dependability in job attendance, punctuality and acceptance of responsibility.
5.	COMMUNICATION - Displays the ability to effectively express ideas clearly in both oral and grammatically correct written form. Includes the necessary and relevant information when completing reports.
6.	WORK ATTITUDE - Demonstrates initiative and interest in service to the public by the performance of their job.
7.	COMPATIBILITY - Ability to work with fellow officers in mutual decision making while taking an equal share of the workload.
8.	RECEPTIVENESS - Shows willingness to receive information, follows orders, and accepts counseling from supervisors.
9.	APPEARANCE - Personal and professional pride shown by neatness, grooming, and uniform appearance.
10.	USE OF EQUIPMENT - Displays knowledge, care, and skill in the use of all issued equipment.

The MPD performance evaluation system, as described in the directive, appears to be comprehensive. But unless the results are more closely tied to rewards, it will not be viewed with the seriousness it might be.

Findings – Performance Evaluation

The MPD has established a performance evaluation system that defines and measures the behaviors and actions desired of its employees. The current system is adequate, in that

the results of performance evaluation can be used to promote personnel growth and development. There is no pay for performance plan in the MPD, so performance evaluations do not have an impact on compensation. More importantly, the results of performance evaluations are not used when considering an officer for promotion. Promotability ratings based on performance evaluations are not part of the promotional procedure agreed to with the Memphis Police Association. Nonetheless, the implementation of the seven recommendations that follow will improve the performance evaluation system.

Recommendations – Performance Evaluation

23. *The evaluation system should require formal discussions more frequently than once a year.*

Notifying employees of performance deficiencies in sufficient time (90 days) to correct their performance before the end of the rating period is a good practice. However, a better practice is to meet with each employee (not just those needing improvement) at the mid-point of the evaluation period to discuss the employee's performance to that point. Strengths and weaknesses should be pointed out and strategies developed that would allow the employee to improve his/her performance (even that which is already at an acceptable level).

24. *The due date of performance evaluations should be staggered to eliminate the need to do all performance evaluations at one time.*

More attention can be paid to the content and quality of individual evaluations if performance evaluation workload for supervisors can be less concentrated.

25. *The department should incorporate a review of performance evaluations in the promotional process.*

Those responsible for the performance evaluation system feel that the evaluation process has lost some of its impact when it is not used in evaluating the promotability of an officer.

26. *The department should expand and ensure consistency in the use of the Officer Behavior Reports (OBR).*¹²

The department's practice of using OBRs to carry out station level documentation of positive and negative behaviors is a good approach to evaluating performance. Efforts should be made to ensure that OBRs are used consistently across the department.

27. *The department should introduce the concept of organizational values into the performance evaluation system.*

Positive performance that is in direct relationship to department values should be documented in an OBR. A section should be added to the performance evaluation report that allows the evaluator to report, in a narrative fashion, how well an officer understands and adheres to department values. For instance, if the defined value of integrity was a component of the MPD's values system, the evaluating supervisor would note and counsel an officer on instances where an officer behavior exhibited a high level of integrity, or when an officer was behaving in ways that demonstrated little or no integrity.

28. *The department should expand the current reward system for positive performance.*

The MPD currently provides additional training opportunities or award transfers (special unit assignments) to officers who demonstrate exemplary performance. Additional options that reward exemplary performance should be sought.

29. *The department should provide ongoing performance evaluation training to supervisors.*

To ensure uniformity in how officers are evaluated by supervisors, all supervisors should receive initial and periodic refresher training in the system and in how to effectively rate their subordinates. The department should strive to create a set of expectations and standards that are common across the department. One supervisor's expectations and standards should vary very little from another's.

¹² OBRs are a simple one-page form used at the workstations. They are used to document officer performance. An OBR can be used to commend an officer's positive actions, or document poor performance. OBRs are used as a reference when developing annual performance evaluations.

Consistency in administering the program throughout the department is required to provide equity in employee development opportunities. Identifying and intervening in cases of poor performance also should be done in a uniform manner.

Additional Policy Recommendations

While responding to the high level questions posed in this report, a number of high-risk policies were reviewed. These include policies covering internal integrity, MPD's rules, rug policy, command officer notification, use of force and weapons. A list of those policies and associated recommendations are presented below.

30. Internal Integrity Policy, Page 2 Section I regarding Workstation Complaint Forms. The policy states: "The completed form is to be submitted to the Workstation Lieutenant Colonel who will forward a copy of all workstation complaints to IAB upon receipt."

Recommendation: The policy should be more detailed and clearly state that a designated official at Internal Affairs will log the receipt of all incoming complaints, review them, and make the decision as to whether they are suitable for handling in the field, or if they will be investigated at the ISB (Internal Affairs or Security Squad). Reportedly this is the practice at MPD (and PERF concurs this is a best professional practice), but the responsibility for this decision is not clear in the policy.

31. Internal Integrity Policy, Page 3, Section I.B.1 B, regarding Internal Affairs investigative responsibility. The policy states that complaints of violations of MPD and City Policies and Procedures will be investigated by Internal Affairs, except discourtesy complaints without multiple witnesses which will be documented on a "Walk-In Complaint" form and forwarded to the workstation commander for resolution.

Recommendation: Though complaints of minor discourtesy may be appropriately handled at the workstation level, it is the nature and severity of the allegation(s), not the number of witnesses to the infraction, that should determine where the complaint is to be investigated.

32. Internal Integrity Policy, Page 6, Section B.3, regarding the requirement to report serious misconduct to the bureau or station commander and IAB within four hours. The intent of this policy statement is to ensure prompt notification to commanders when an allegation demands immediate attention.

Recommendation: If the report of serious misconduct involves an officer still at work or if the misconduct is of a nature that constitutes a risk or potential for the

continuance of the misconduct or injury to any person (including the officer), the briefing of command and IAB personnel should be immediate.

33. Internal Integrity Policy Page 10, Section B.2, regarding allowing officers involved in critical incidents time to gain control of themselves emotionally. This policy statement governs relieving officers from duty in order to give them an opportunity to heal and/or reflect after a serious incident.

Recommendation: The department has the option of referring an officer to Employee Assistance for counseling and other support, but it is not referenced here. Inasmuch as departmental policy is intended to guide and direct, it should be noted as an option to be considered.

34. Internal Integrity Policy, Page 12, Section F.7, regarding departmental retention of equipment when an officer is removed from duty.

Recommendation: When a uniformed officer is relieved of his/her weapon at a departmental facility, to ensure the officer's safety he/she should be escorted or transported home.

35. MPD Rules, Page 5, DR 113 (Alcoholic Beverages), regarding the administrative charging of an officer after his/her arrest for an alcohol-related incident including, but not limited to, DUI. The policy states that an officer's first sustained violation will result in a minimum 15 day suspension. A second sustained violation will result in termination.

Recommendation: Retention of an officer who has been criminally convicted of driving under the influence of alcohol or drugs represents a severe liability to the department. If the officer becomes involved in an accident or other harmful act while on duty and intoxicated, the department could be subjected to claims that it was negligent in retaining an officer with previously demonstrated risk factors. The department should establish a no-tolerance policy with regard to on-duty alcohol violations and retain the current disciplinary approach for off-duty violations.

36. MPD Rules, Page 11, DR 133, regarding members operating the department's vehicles outside the city except when in hot pursuit of a felon.

Recommendation: It would be appropriate to cite the department's policy that governs pursuits as part of this statement.

37. MPD Rules, Page 14, DR 301, regarding Excessive Force/Unnecessary Force.

This policy statement restricts officers from using an amount of force greater than needed or justified for the circumstances.

Recommendation: This policy statement should stress that officers consider the facts and circumstances known to the officer at the time of the confrontation, including: the severity of the subject's crimes; the immediacy of the threat posed by the subject to the safety of the officer(s) or others; and whether the subject exhibits active aggression or is actively resisting arrest. This is in accordance with the "objective reasonableness" principle established in the U.S. Supreme Court's landmark case on use of force, *Graham v. Connor*, 490 U.S. 396 (1989). Objective reasonableness requires more than an officer's subjective beliefs about a subject and the level of threat that the subject poses.

38. Drug Policy, Page 4, Section E.6, regarding an officer's requirement to submit to a drug test after an officer-involved shooting resulting in injury or fatality.

Recommendation: As this policy statement is written, an on- or off-duty officer involved in a shooting incident in which there is no injury or fatality is NOT subject to a drug test. Whether a shooting by an officer results in the subject being hit is a matter of marksmanship or other factors that should not dictate the appropriateness of a drug test. If the off-duty shooting is within the MPD's jurisdiction, it should be treated as all others. If in another jurisdiction, the MPD should strive to have the investigating agency ensure that drug testing takes place.

39. Drug Policy, Page 4, Section E., regarding officers being exempt from some requirements of drug testing if they are working off-duty security jobs in a decommissioned status.

Recommendation: Regardless of whether officers are working security in a decommissioned status, they should not be held to a different drug testing standard than when working on-duty. They are still MPD officers. When an MPD officer fires a weapon in the city, the department should take steps to determine if the officer was under the influence of drugs or alcohol.

40. Drug Policy, Page 5, Section A, regarding informing officers during roll call that immediate random drug testing is going to occur.

Recommendation: The policy is not clear that the random test planned for a work group will be unannounced until officers are assembled at roll call. Announcing a planned test beforehand or openly setting up at a work station in advance can alert officers and possibly compromise the value of random testing. It should be stressed that officers are to be first informed of the impending random drug test only after they are assembled at roll call.

41. Drug Policy, Page 5, Section B, regarding Reasonable Suspicion Testing Procedures.

Recommendation: If the member is an officer, he/she should be relieved of any departmental firearms before being driven home. If the officer is impaired and should not drive, he/she should not be left in control of departmental firearms.

42. Command Officer Notification Policy, Page 2, Section I. N., regarding the option that officers may call for a supervisor on any incident when they have reason to believe that it is important or necessary.

Recommendation: This policy statement should be enhanced by adoption of a best practice supported by PERF: to dispatch a supervisor to every call in which there is any indication at the time of dispatch that the call is of a volatile nature, or when that becomes apparent later. Many chiefs have found that at calls in which officers are faced with use of force situations, prompt arrival of a supervisor (ideally within the first five minutes) can minimize the escalation of force. Mere supervisory presence can calm a situation.

43. Use of Force Policy, Page 3, Section II, regarding Response to Resistance Continuum. The department identifies an escalating set of actions open to officers meeting resistance. Unlike many use-of-force continuums that seek to match specific officer reactions to specific subject actions, which sometimes can be overly simplistic, MPD's policy takes a better and more flexible approach that acknowledges the importance of the tenet of "objective reasonableness."

Recommendation: In Graham v. Connor, 490 U.S. 386 (1989), the U.S. Supreme Court established that police officers may use the amount of force that is reasonable to control subjects during a lawful seizure. The court held that the test of reasonableness under the Fourth Amendment cannot be given a precise definition or mechanical application. The court held that objective reasonableness is established according to

circumstances and the totality of facts known to the officer at the time he or she took the forceful action. This policy could be strengthened by including the above underlined text.

44. Use of Force Policy Page 5, Section IV, regarding the amount of force authorized. In Number II of this Response to Resistance policy (page 4), it is stated: “Officers must be aware that this is a dynamic continuum where an officer can be justified in instantly escalating from the lowest level of force to Deadly Force without having to stop and utilize each and every step in between.” In Number IV (page 5), it is stated that officers “...must exhaust every other reasonable means of prevention before resorting to the use of deadly force.”

Recommendation: While the intent of the statement here in Number IV is understood, “exhausting every other means” can imply that each step of the continuum must be exhausted. Consistency in verbiage would be helpful. The department should clarify this point. In addition, the directive should contain language to indicate that de-escalation should take place as resistance lessens.

Recommendation: The same clarification should be applied to Number 4.B.

45. Use of Force Policy, Page 6, Section V.E., regarding shooting at vehicles. The current policy prohibits shooting “From or at any moving vehicle, except in a case where an officer has probable cause to believe that the suspect committed a violent felony and the officer has a reasonable belief that the suspect will inflict serious bodily injury or death to other persons if not immediately apprehended.

Policies against shooting from or at moving vehicles are a nationally accepted best practice. Shooting the operator of a moving vehicle does not result in a stopped vehicle – it simply raises the chances of danger from an uncontrolled vehicle. Probable cause should not constitute an exception.

Recommendation: The policy should be updated to include all of the elements found in the following example: “Officers should not discharge a firearm at a moving vehicle or from a moving vehicle unless the occupants (suspects) appear to pose a direct threat to the life and safety of the sworn member or other persons. The officer’s first responsibility, if possible, is to move from the path of the oncoming vehicle.

46. Use of Force Policy, Page 7, Section A. 1-3, regarding notification of ISB, CSI, and the Homicide Bureau. These notifications are to be made in any incident involving:

1. Any shooting by an officer, either on-duty or off-duty, and/or regardless of the weapon, which involves death or injury to oneself, a suspect, other officers, or a citizen; or
2. Any shooting by an officer, either on-duty or off-duty, and/or regardless of the weapon, where a suspect has been shot or there is evidence that the suspect was shot and has not been located; or
3. Any incident where an officer has been shot by a suspect.

The three cited circumstances justifying notification all hinge on marksmanship, rather than the intent of the shooter. When an officer or a suspect fires a weapon with the intent of striking a person, the intensity of the investigation should not be regulated by whether the target was struck.

Recommendation: PERF interviews with ISB staff revealed that in practice, these notifications are made and complete investigations are conducted regardless of whether a person was struck, but this is not reflected in the policy. The policy should be updated to reflect the actual practice.

47. Weapons Policy, Page 2 Section 2.I, regarding “Less-than-Lethal” weapons.

Recommendation: All references to “less-than-lethal” weapons should be changed to the term “less-lethal.” Less-than-lethal implies that a weapon cannot result in death, which is not accurate. “Less-lethal” is the correct term to use.

48. Weapons Policy, Page 8, Section A.1-2, regarding the requirement to secure loaded or unloaded firearms in a locked case, safe, rack, drawer, or other secure device when not worn by the officer.

Recommendation: This point should be clarified. Firearms in a departmental gun locker or safe are clearly secure. Locked cases that could be portable and desk drawers are not secure locations and should not be used to secure firearms. Moreover, it should be stressed that officers’ firearms must be secured (not on the officer’s person) whenever processing or interviewing suspects at a police facility.

49. Weapons Policy, Page 9, Section VI.B, regarding annual in-service firearms training. Officers are required to qualify with their approved firearms, annually.

Recommendation: One requalification opportunity a year may meet state mandates, but may not allow officers to maintain their proficiency or familiarization with the various weapons in their control. The department should either schedule semi-annual

firearm qualifications or, at a minimum, provide opportunities when officers can use the department's range to practice firearm proficiency and practical/situational shooting exercises on their own under the supervision of a range master.

50. Weapons Policy, Page 17, Section IX.C, regarding rules on chemical agents – the response to resistance. This wording conflicts with that of the Resistance to Force Policy, which recognizes that some circumstances may call for an officer to escalate to a higher level of force quickly – without escalating one step at a time. Inconsistency in this area was noted several times.

Recommendation: The department should be consistent in its guidance as to the force continuum and the escalation of force.

Conclusion

The City of Memphis and the Memphis Police Department contracted with the Police Executive Research Forum to conduct a series of studies of the Memphis Police Department. This study, the fourth of five, examined Accountability and Transparency, which are critical components of the operations of the MPD especially given the recent incidents of serious misconduct by Memphis police officers.

The bulk of this study consists of PERF's examination of 10 questions posed by the City. Six of the questions address the department's performance *after* an allegation of misconduct has been made. They covered the process used to deal with external and internal complaints against department members, responsibility for investigating complaints, how disciplinary outcomes are determined, the process for citizens or employees to appeal a disciplinary finding and how the outcomes of complaint investigations are reported.

The answers to these questions indicate that for the most part, the Memphis Police Department has appropriate procedures in place to receive and investigate allegations of officer misconduct. There are, however, a number of areas where improvements can be made. One important improvement relates to transparency: the department needs to develop a strategy to report to the community the outcomes of its disciplinary investigations. This will demonstrate that the department is serious about misconduct allegations and that it sanctions its employees when they engage in wrongful behavior.

These first six areas are common to all large police departments and Memphis has put substantial effort into creating effective procedures for handling allegations of misconduct. What is more difficult is to develop systems that will *prevent* misconduct. Predicting human behavior and putting into place mechanisms to guide people along the right paths is much more difficult than dealing with those who step outside the lines. This is the focus of the four remaining questions posed by the City.

These four questions dealt with identifying officers at risk, fostering accountability, developing organizational values and culture and evaluating employee performance. The Memphis Police Department is making progress in these areas but more needs to be done. PERF presents a series of recommendations that, if implemented, will accelerate and strengthen the departments' prevention efforts. No recommendations can guarantee that

misconduct will be eliminated. Humans are fallible. However, PERF's recommendations are designed to make changes that will lessen the chances of misconduct.

In the final portion of the study, PERF reviewed specific policies covering internal integrity, MPD's rules, drug policy, command officer notification, use of force and weapons. Recommendations to incorporate best policing practices in these policies were made when warranted.

This report makes 50 recommendations. Some of the recommendations are related to higher level organizational operations, while others involve specific policy revisions. In order to sustain the community trust that is necessary for the City and the Department to reduce violent crime and enhance neighborhood safety the Memphis Police Department should begin implementing these recommendations.

Appendix A – Grievance/Appeals Policy

The following is the MPD's grievance and appeals policy, as referenced earlier in this report.

H. Appeal/Grievance:

1. Non-Civil Service

At the conclusion of the hearing, the officer must advise the hearing officer whether he/she wishes to appeal or grieve the disciplinary action. If the disciplinary action is 10 days or less, the officer may submit to a grievance procedure or an internal appeal, but not to both. The employee will indicate on the Hearing Summary Form their decision to file an internal appeal or a grievance.

2. Civil Service

At the conclusion of the hearing, the officer must advise the hearing officer whether they wish to appeal or grieve the disciplinary action. If the disciplinary action is 11 days or more, the officer may submit to a grievance procedure or an appeal to the Civil Service Commission, but not to both. If the officer submits to the grievance procedure, they will sign a written waiver of any right to appeal the matter to the Civil Service Commission, per the Memorandum of Understanding.

If the decision is made to appeal the matter, the hearing officer will prepare the hearing summary and forward the entire file to the requested Appeal Authority.

After the hearing is complete, discipline is ordered, and the officer chooses to have an internal appeal (10 days or less), the disciplinary action will be withheld until the completion of the internal appeal.

If an officer decides to grieve the disciplinary action ordered instead of an internal appeal (10 days or less), the disciplinary action is to be taken as soon as possible. This is due to the length of time involved with the grievance process and the possible arbitration action to follow.

If disciplinary action is a suspension for 11 or more days, the disciplinary action will be taken as soon as possible. Again, this is due to the length of time involved in resolving Civil Service appeals.

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If disciplinary action is a suspension for 11 or more days, the disciplinary action will be taken as soon as possible. Again, this is due to the length of time involved in resolving Civil Service appeals.

Appendix B – Regulations for the Governance of the Police Department

The following is the MPD's policy regarding the governance of the police department, as reference earlier in this report.

A. Service to the Community

The Memphis Police Department has the primary responsibility of providing complete law enforcement services to the City of Memphis. The Memphis Police Department will respond to all calls for service within the City of Memphis and will enforce all Memphis City Ordinance Codes. MPD officers will investigate and enforce all violations of Tennessee Code Annotated laws, traffic and criminal, within the City of Memphis.

Within the confines of the Memphis city limits, the Memphis Police Department has concurrent jurisdiction with the Shelby County Sheriff's Department, and with various state and federal law enforcement agencies. These agencies have legal authority to perform particular police functions within the City of Memphis. The origin of their office (federal, state, etc.) defines the scope of their authority. Since these organizations share the same primary objective, they may from time to time request assistance from the Memphis Police Department. (2.1.2)

The Memphis Police Department serves the citizens of the City of Memphis by performing the law enforcement function in a professional manner, and it is to these citizens that it is ultimately responsible. The Department protects the rights of all persons within its jurisdiction to be free from criminal attack, to be secure in their possessions and to live in peace.

A large urban society free from crime and disorder remains an unachieved ideal; nevertheless, consistent with the values of a free society, it is the primary objective of the Memphis Police Department to, as closely as possible, approach that ideal. In doing so, the Department's role is to enforce the law in a fair and impartial manner, recognizing both the statutory and judicial limitations of police authority and the constitutional rights of all persons.

The Memphis Police Department recognizes that diversion programs are effective alternatives available to the criminal justice process and will support and assist intervention program administrators, courts and solicitors through funding and/or participation in

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accordance with State and Federal guidelines.

These programs include but are not limited to the Shelby County Drug Court where the department provides funding and the Shelby County Community Service Work Program where the department provides community service worksites.

B. Standards of Conduct:

1. All non-sworn, civilian personnel of the Memphis Police Department shall abide by the following Civilian Code of Ethics:

“As an employee of the Memphis Police Department, I regard myself as a member of an important and honorable profession. As such, I will not, in the performance of my duties, work for unethical advantage or personal profit and I shall:

- *Perform my duties with efficiency to the best of my ability.*
- *Be truthful at all times. My conduct and performance of duties will be accomplished in an honest manner, and in compliance with the laws; local, county, state, and country.*
- *Adhere to the confidentiality of the Law Enforcement profession.*
- *Recognize at all times that I am a public safety employee, and that ultimately I am responsible to the public.*
- *Give the most efficient and impartial service of which I am capable at all times.*
- *Be courteous in all my contacts at all times.*
- *Regard my fellow employees with equality, dignity, and respect.*
- *Be loyal to my fellow employees, my superiors and the Memphis Police Department.*
- *Accept responsibility for my actions.*
- *Strive to do only those things that will reflect honor on my fellow employees, myself, and the Memphis Police Department”*

2. All sworn members of the Memphis Police Department will abide by the standards of conduct set forth in the Law Enforcement Code of Ethics (1.1.2):

"As a law enforcement officer, my fundamental duty is to serve mankind; to safeguard lives and property, to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights to all persons to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life. I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my

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duty. I will never act officiously or permit personal feelings, prejudices, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession ... law enforcement."

Police officers are frequently required to make decisions affecting human life and liberty in difficult situations where there is little or no opportunity to seek advice and little time for reflection.

Law enforcement, therefore, requires an officer to have the stamina, intelligence, moral courage and emotional stability necessary to fairly and impartially deal with human beings in the many complicated and potentially explosive situations, which he encounters.

The public demands that the integrity of its law enforcement officers be above reproach, and the dishonesty of a single officer may impair public confidence and cast suspicion and disrespect upon the entire Department. Succumbing to even minor temptation can be the genesis, which will ultimately destroy an individual's effectiveness and contribute to the corruption of countless others. A member must scrupulously avoid any conduct, which might compromise the integrity of themselves, their fellow members or the Department.

A police officer is the most conspicuous representative of government, and to the majority of the people he is a symbol of stability and authority upon whom they can rely. An officer's conduct is closely scrutinized, and when his actions are found to be excessive, unwarranted or unjustified, he and the Department are criticized far more severely than comparable conduct of persons in other walks of life. Since the conduct of a member, on or off duty, does reflect directly upon the Department, members must at all times conduct themselves in a manner which does not bring discredit to themselves, the Department, or the City.

Effective law enforcement depends upon a high degree of cooperation between the Department and the public it serves. The practice of courtesy in all public contacts encourages understanding and appreciation; discourtesy breeds contempt and resistance. The majority of the public are law-abiding citizens who rightfully expect fair

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and courteous treatment by members of the Department. While the urgency of a given situation would demand firm action, discourtesy or disrespect shown toward any citizen is indefensible. The practice of courteous and respectful conduct by a member is not a manifestation of weakness; it is, on the contrary, entirely consistent with the firmness and impartiality that characterizes a professional police officer.

Members of the Memphis Police Department are confronted daily with situations where firm control must be exercised to affect arrests and protect the public safety. Control is achieved through advice, persuasion, warnings or the use of physical force. While the use of reasonable physical force may be necessary in situations, which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances involved. Officers are permitted to use whatever force is reasonable and necessary to protect others or themselves from bodily harm. The use of excessive and unwarranted force or brutality will not be tolerated under any circumstances.

Recognition of individual dignity is vital in a free system of law. Just as all persons are subject to the law, all persons have a right to dignified treatment under the law, and the protection of this right is a duty, which is binding on the Department and each of its members, as any other.

Every member must treat each person with respect and he must be constantly mindful that the people with whom he is dealing are individuals with human emotions and needs. Such recognition and conduct is not an additional duty imposed to a member's primary responsibilities, it is inherent in them. A citizen's encounter with the police can be a very frightening experience, and under such circumstances, the risk of misunderstanding is great. The minimization of this risk is a challenge intrinsic in every public contact by the members of this Department. Each member of the Department must strive to establish a climate where they may perform their sworn duties with the acceptance, understanding, and approval of the public.

It is essential that public confidence be maintained in the ability of the Department to investigate and properly dispose of complaints against its members. Additionally, the Department has the responsibility to seek out and discipline those whose conduct discredits the Department or impairs its effective operation. The rights of the member, as well as those of the public, must be conducted fairly, impartially and efficiently, with the truth as its primary objective."

All personnel shall receive training concerning ethics biennially.

C. Regulations Establishing the Goals of the Department:

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To implement the foregoing regulations of the Memphis Police Department, the following goals are hereby established:

1. Protection of life and property in the City of Memphis;
2. Prevention of crime;
3. Preservation of the public peace;
4. Enforcement of all laws and ordinances;
5. Arrest of law violators and assembling competent evidence of the alleged violation;
6. Promotion of respect and cooperation of all citizens for the law and for those sworn to enforce it.
7. A Climate of respect for all citizens and in every interaction with citizens by every member of the department.

D. Regulations Establishing the Goals of Department Members:

The goals of Department members that embody and implement the policy of the Department are:

1. Maintenance of the highest standards of integrity and ethics;
2. Excellence in the performance of duty;
3. Maintenance of private lives, which inspire respect and admiration and provide an example for the entire community.

In order for members of the Department to fulfill these goals and assist in fulfilling the Department's goals, members who wish to make suggestions for improvement may communicate their suggestions in writing to the Research and Development Office.

E. Use of Discretion by Department Personnel

Discretion is the power of free decision, or latitude of choice within certain legal bounds. It is unrealistic to expect officers to enforce all laws and ordinances regardless of the circumstances that are encountered. Instead, officers must make discretionary choices in enforcement action or inaction.

Discretion shall be based on the totality of the circumstances and applied consistently. The use of discretion requires that an officer make responsible decisions which are predicated on good judgment and can withstand scrutiny by the department, other jurisdictional components of the criminal justice system and the community itself. Consistent and wise use of discretion will do much to preserve good relationships and retain the confidence of the public. On the contrary, when discretionary power is poorly or unevenly exercised, the actions may be viewed by the public as favoritism, bias or corruption which can derail the

public's perception of procedural justice (the fairness of the processes by which decisions are made) and the legitimacy of the police. Over time this can cause the diminishment of vital cooperation and support of the police by the public.

Officers will use discretion consistent with the laws that they are charged to enforce, and will not exercise discretion when certain activities are mandated by statutes, department policy or supervisory direction. Officers will take enforcement action whenever the criminal act endangers or has the potential to endanger the lives, safety, property and well-being of the public. If an officer needs guidance in exercising discretion, the officer should refer to state law, city ordinance code, or the MPD Policy and Procedures Manual. If the situation is beyond the officer's scope of responsibility, the officer should contact a supervisor for assistance. (1.2.7)

Nothing in this directive is to be construed as permission to disregard any state law, ordinance or rule and regulation of the department. Each officer will be held accountable for their actions in these circumstances.

Appendix C – Performance Evaluation Policy

The following is the MPD's performance evaluation policy, as referenced earlier in this report.

I. Purpose of Performance Evaluations

To successfully serve the citizens of Memphis, the Memphis Police Department must be able to depend on satisfactory work performance from all of its employees. Identifying the strengths and weaknesses of personnel with the intent of improving individual performance levels will improve the overall effectiveness of the department.

Commanding officers must monitor the Supervisor's evaluation results to insure that the process is uniform and unbiased. Supervisors will be evaluated by their commanding officers regarding the fairness and impartiality of ratings given, their participation in counseling employees, and their ability to carry out the rater's role in the performance evaluation system. This will provide the evaluated employee the confidence to use his or her evaluation as a benchmark for improving performance while increasing the potential for career advancement. (35.1.14)

The Performance Evaluation process will be conducted annually, with the evaluation period beginning on January 1 and ending on December 31. (35.1.2) Performance of the employee prior to or following the rating period will be excluded from the rating for that period. (35.1.5)

ALL EVALUATIONS WILL BE PRINTED ON WHITE PAPER.

If an employee's performance is deemed unsatisfactory in any category, they will receive written notification at least 90 days, if possible, before the end of the evaluation period. The employee will be notified of the area of the deficiency in the form of an Observed Behavior Report. Supervisors will advise employees of the unsatisfactory performance and define actions that should be taken to improve performance. If the unsatisfactory performance continues, the information will be included in the evaluation report at the end of the 90-day period. (35.1.6)

* The severity of unsatisfactory behavior (i.e. statement of charges or suspension) within 90 days before the end of the evaluation period may be a determining factor for inclusion on the annual evaluation.

The criteria for the evaluation will be specific to the assignment (Civilian, Patrolman, Sergeant, or Supervisor) of the employee for that period. (35.1.4) Performance evaluations will be retained in the employee's personnel file indefinitely. (35.1.13)

II. Procedures for Administering Performance Evaluations

The performance evaluation is to be completed by the employee's year-end supervisor. If the employee has been transferred at some point during the evaluation period, the supervisor may request a transfer evaluation from the employee's previous supervisor(s).

A. Ratings

Each dimension of the evaluation will be rated according to the employee's performance in that area for the evaluation period. The dimension will be rated as one of the following (35.1.1a):

- **Needs Improvement** – The employee *consistently* performs poorly with regard to the evaluated dimension.
- **Meets Job Expectations** – The employee performs their job satisfactorily and is able to do so with minimal guidance by supervisors.
- **Exceeds Expectations** – The employee *consistently* performs beyond expectations of their job description, and does so with minimal supervision and guidance.

B. Dimensions

There are ten dimensions to be evaluated and each dimension on the evaluation form includes an area for explanatory comments. The Supervisor will complete the explanatory comments by giving specific facts supporting the rating of each evaluation dimension. Any performance rated as "Needs Improvement" or "Exceeds Expectations" must be substantiated with documentation (Statement of Charges, Letter of Commendation, etc.). This documentation will be attached and submitted with the evaluation. (35.1.7) (35.1.1b, c)

The Supervisor will complete the "Supervisor's Comments" area of the evaluation form, including guidance to the employee regarding performance expectations and recommendations for the upcoming evaluation period, as well as recommendations to the employee concerning career development. (35.1.9)

C. Approval and Review

Upon completion of the employee's evaluation, the Supervisor will forward the evaluation to their Commanding Officer. Evaluations should be completed and submitted for the Commanding Officer's review and approval no later than March 15. The evaluation will be reviewed for approval and signed by the Commanding Officer. (35.1.8)

After approval by the Commanding Officer, the evaluation will be returned to the employee's supervisor to be presented to the employee. Upon presentation, the Supervisor will review with the employee their evaluation. This advice will provide feedback regarding a review of performance and an indication of expectations for the upcoming evaluation period. This is also an appropriate time to discuss the employee's career goals, addressing what additional

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training and development the employee may need to achieve these goals. The employee should leave this review with a better understanding of what is required to improve their performance score in the upcoming evaluation period. (35.1.9)

At the conclusion of the review, the employee will be given the opportunity to make written comments and sign the performance evaluation. The employee's signature will indicate that he/she has read the evaluation. The signature does not imply agreement or disagreement with the contents of the evaluation, as the employee may appeal the results. The employee will be provided with a copy of the evaluation. (35.1.10, 35.1.11)

III. Appeal Process

At the conclusion of the employee's review, the employee may wish to appeal the rating that the Supervisor has assigned to a dimension. The employee will indicate the desire to appeal by checking "yes" or "no" in the appeal category of the evaluation. If an appeal is requested, the employee will indicate, by number, the dimension(s) that they wish to appeal, and address the appropriate dimension with written comments.

The Supervisor will forward the appealed evaluation to their commanding officer and the commanding officer will complete the appeal within 90 days. The employee will receive and sign a copy of the appealed Performance Evaluation after it has been reviewed by the commanding officer. This will be the end of the appeal process; the commanding officer's decision is final. (35.1.12)

IV. Performance Evaluation Training

Training in the administration and rating of performance evaluations will be given upon promotion to a supervisory rank. The training will be administered during the Developmental Training Class, which is conducted for each Supervisory promotional process. Additional training may be provided through electronic communications. (35.1.1 d) Refer to The Performance Evaluation Instructions and Procedures Power Point which is posted on KIOSK in the Administrative Forms section.

V. Evaluation Dimensions and Definitions (35.1.1 a)

A. Evaluation Dimensions/Definitions for the rank of PII

- 11. JOB KNOWLEDGE-** Displays knowledge of law, procedures, policies, and techniques as related to the officer's job tasks.
- 12. JUDGEMENT -** Analytic assessment of a situation and taking necessary and appropriate action after consideration of alternative approaches.
- 13. DEALING WITH THE PUBLIC -** Ability to deal with the public in a respectful and

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tactful manner while acting within the scope of the Officer's duty and the law.

- 14. RELIABILITY** - Dependability in job attendance, punctuality and acceptance of responsibility.
- 15. COMMUNICATION** - Displays the ability to effectively express ideas clearly in both oral and grammatically correct written form. Includes the necessary and relevant information when completing reports.
- 16. WORK ATTITUDE** - Demonstrates initiative and interest in service to the public by the performance of their job.
- 17. COMPATIBILITY** - Ability to work with fellow officers in mutual decision making while taking an equal share of the workload.
- 18. RECEPTIVENESS** - Shows willingness to receive information, follows orders, and accepts counseling from supervisors.
- 19. APPEARANCE** - Personal and professional pride shown by neatness, grooming, and uniform appearance.
- 20. USE OF EQUIPMENT** - Displays knowledge, care, and skill in the use of all issued equipment.

B. Evaluation Dimensions /Definitions for the rank of Sergeant

- 1. JOB KNOWLEDGE** - Displays knowledge of law, procedures, policies, and techniques as related to their job tasks.
- 2. JUDGEMENT** - Analytic assessment of a situation and taking necessary and appropriate action after consideration of alternative approaches.
- 3. DEALING WITH THE PUBLIC** - Ability to deal with the public in a respectful and tactful manner while acting within the scope of the Officer's duty and the law.
- 4. RELIABILITY** - Dependability in job attendance, punctuality and performance level; acceptance of responsibility.
- 5. COMMUNICATION** - Displays the ability to effectively express ideas clearly in both oral and grammatically correct written form. Includes the necessary and relevant information when completing reports.
- 6. WORK ATTITUDE** - Demonstrates initiative and interest in service to the public by the performance of their job. Shows willingness to receive information, follows orders, and accepts counseling from supervisors.
- 7. DECISIVENESS** - Displays readiness to make decisions, render judgments and take prompt action.
- 8. INITIATIVE** - Proactively influences situations rather than passively accepting outcomes; originates new ideas or methods in response to problems.
- 9. PLANNING AND ORGANIZATION** - Utilizes all available resources to efficiently establish an appropriate course of action to accomplish a specific goal.
- 10. PROBLEM SOLVING** - Displays skills in identifying problems and gathering relevant information in order to institute solutions.

C. Evaluation Dimensions /Definitions for Supervisory Ranks

1. **DEVELOPMENT OF SUBORDINATES** - Supervisor is effective in maximizing the potential of subordinates through training, counseling, and development activities; shows ability to understand and to respond appropriately to the needs and viewpoints of subordinates, as well as shows fairness and impartiality in rating subordinate's performance through annual evaluations.
2. **JUDGEMENT** - Supervisor shows the ability to develop alternative solutions to problems, to evaluation courses of action and reach sound decisions.
3. **MANAGEMENT CONTROL** - Supervisor is skilled in establishing procedures to monitor processes, tasks, and actions of subordinates; shows the ability to evaluate the results of activities.
4. **STRESS TOLERANCE** - Supervisor shows ability to remain self-confident and maintains composure in any situation that is encountered.
5. **COMMUNICATION** - Supervisor shows effective communication in individual or group settings; shows the ability to express ideas clearly in written and grammatical form.
6. **LEADERSHIP** - Supervisor is effective in getting ideas accepted and directing a group or an individual toward accomplishing a task.
7. **DECISIVENESS** - Supervisor shows readiness to make decisions, render judgments and take prompt action.
8. **COOPERATION** - Supervisor proactively influences situations rather than passively accepts outcomes; originates new ideas or methods in response to problems.
9. **PLANNING AND ORGANIZATION** - Supervisor shows the ability to efficiently establish an appropriate course of action for self and/or others to accomplish a specific goal; makes proper personnel assignments and uses resources efficiently.
10. **PROBLEM SOLVING** - Supervisor shows skill in identifying problems and gathering relevant information in order to institute solutions.

D. Evaluation Dimensions/Definitions for Civilian Employees

1. **TEAMWORK** - The employee balances team and individual responsibilities; exhibits objectivity and openness to others' views.
2. **QUANTITY** - The employee meets productivity standards by completing work in a timely manner while striving to increase productivity and achieve established goals.
3. **QUALITY** - The employee demonstrates accuracy and thoroughness, displays commitment to excellence, applies feedback to improve performance, monitors own work to ensure quality while looking for ways to improve quality.
4. **PLANNING AND ORGANIZATION** - The employee works in an organized manner by prioritizing activities and using time efficiently. The employee sets goals and objectives, and integrates changes smoothly.
5. **JOB KNOWLEDGE** - The employee is competent in required job skills and exhibits the ability to learn and apply new skills. The employee requires minimal supervision, uses resources effectively, and keeps abreast of current developments.
6. **INITIATIVE** - The employee volunteers readily, undertakes self-development activities, seeks increased responsibilities while seeking and taking advantage of opportunities;

takes independent actions and calculated risks but asks for help when needed.

7. **PROBLEM SOLVING** - The employee displays skills in identifying problems and gathering relevant information in order to institute solutions.
8. **COOPERATION** - The employee establishes and maintains effective relations, maintains a positive outlook, exhibits tact and consideration, offers assistance and support to co-workers, works actively to resolve conflicts.
9. **COMMUNICATIONS** - The employee expresses ideas and thoughts verbally and in written form; exhibits good listening and comprehension, keeps others adequately informed, and uses appropriate communication methods.
10. **ATTENDANCE AND PUNCTUALITY** - The employee begins work on time, arrives at meetings and appointments on time, keeps absences within guidelines, schedules time off in advance while ensuring that work responsibilities are covered when absent.